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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 22, 1990

2:00 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

GINA KENDRICK, Acting Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ABEL S. ARMAS, Member
Youthful Offender Parole Board

ARDAVAST KEVORKIAN, Member
State Energy Resources Conservation and
Development Commission

SENATOR HERSCHEL ROSENTHAL, Chairman
Senate Energy and Public Utilities Committee

DONALD S. PRESSLEY, General Counsel
Agricultural Labor Relations Board

ALFREDO C. BAUTISTA, Member
Youthful Offender Parole Board

JOHN W. GILLIS, Member
Board of Prison Terms

DIANA MARSHALL, Commissioner
Workers' Compensation Appeals Board

SENATOR BILL GREENE, Chairman
Senate Industrial Relations Committee

APPEARANCES (CONTINUED)

1 JACK HENNING, Legislative Advocate
2 California Federation of Labor, AFL-CIO

3 MERLE RABINE, Chair
4 Legislative Committee
5 California Applicants' Attorneys Association

6 RICHARD P. WINDER, Member
7 Teachers' Retirement Board

8 JACOB MARGOSIAN, Commissioner
9 Workers' Compensation Appeals Board
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--oo0oo--

CHAIRMAN ROBERTI: Let's go to Governor's Appointees for vote only. We will take up Mr. Ardavast Kevorkian --

MS. MICHEL: Senator Rosenthal has asked to come down and talk about Mr. Kevorkian.

CHAIRMAN ROBERTI: This is really for vote only.

MS. MICHEL: Senator Rosenthal was not able to get into Committee last week and had indicated he wanted to be here.

CHAIRMAN ROBERTI: Yes.

Then Mr. Donald Pressley, General Counsel, ALRB. We didn't vote on this.

Do I hear a motion on Mr. Pressley.

SENATOR BEVERLY: Move approval of the confirmation.

CHAIRMAN ROBERTI: Senator Beverly moves confirmation of Donald Pressley, General Counsel of the ALRB.

Secretary will call the roll.

SECRETARY KENDRICK: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY KENDRICK: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY KENDRICK: Senator Petris.

SENATOR PETRIS: No.

SECRETARY KENDRICK: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY KENDRICK: Senator Roberti.

CHAIRMAN ROBERTI: No.

1 The vote is three to two; confirmation is recommended
2 to the Floor.

3 Mr. Margosian we are going to put off for a while,
4 but I expect we may get back to that today.

5 Mr. Margosian, if you're in the room, just stay
6 patient.

7 The next is Governor's Appointees appearing today,
8 Abel S. Armas, Member of the Youthful Offender Parole Board.

9 Mr. Armas, we will ask you what we ask all the
10 Governor's Appointees, and that is why you feel you're qualified
11 to assume/maintain this position.

12 MR. ARMAS: Well, sir, I was privileged to be
13 appointed in 1986 and confirmed by the Senate.

14 I am knowledgeable; I'm experienced in the job,
15 having done it for the past four years.

16 CHAIRMAN ROBERTI: And we confirmed you, when was
17 that?

18 MR. ARMAS: In 1986.

19 CHAIRMAN ROBERTI: There has been some concern in the
20 correspondence that I've received that you don't believe in
21 rehabilitation.

22 Is that true?

23 MR. ARMAS: No, sir, that is not true.

24 CHAIRMAN ROBERTI: Why don't you give us your
25 philosophy as far as a youthful offender who has committed one
26 very heinous crime, say, armed robbery, or something like that.
27 Every person's different based on who they are, I understand
28

1 that, but I'd like to have some idea of how you approach that
2 situation when you're determining their sentencing.

3 MR. ARMAS: We have --

4 SENATOR MELLO: May I ask the Chairman a question
5 here?

6 CHAIRMAN ROBERTI: Yes.

7 SENATOR MELLO: That is regarding the letter that
8 Assemblyman Vasconcellos sent to us over here.

9 I was wondering whether we should call him to see
10 whether or not he wanted to be here. He opposes the
11 confirmation and raises some very important points.

12 I would want to have the letter submitted to the
13 record if he doesn't want to come here, just to have it become
14 part of our record.

15 CHAIRMAN ROBERTI: I don't have a copy of the letter.
16 Do I have a copy of the letter, Nancy?

17 In the meantime, fine, I'll go over the letter and
18 recommend the other Members do so, and Mr. Armas, why don't you
19 address the question.

20 MR. ARMAS: Well, sir, the first thing that I would
21 do is look at the history of the individual, the type of a
22 person that he is as demonstrated by his actions, and I would
23 try to gauge the seriousness of the particular robbery, noting
24 the difference between an armed robbery, the weapon used or
25 force, and/or the victim, and whether there was any brutal
26 actions, you know, exhibited in the crime itself.

27 And then I would review the extensive history
28

1 prepared for our evaluation by the California Youth Authority,
2 and then interview the ward himself and see what, in my view,
3 the prognosis for growth or change for -- toward becoming a
4 responsible citizen is, and then we would go to our guidelines
5 and set a time for training and treatment. And then, as we go
6 through the process of annual reviews, we see where he's going.

7 That's the way I would approach it.

8 CHAIRMAN ROBERTI: Would you say it's fair to say
9 that it's not your philosophy that rehabilitation is beyond --

10 MR. ARMAS: No.

11 CHAIRMAN ROBERTI: -- the capacity of many of these
12 youthful offenders?

13 MR. ARMAS: That's right. It all depends on the
14 individual.

15 CHAIRMAN ROBERTI: I have a letter here from the
16 Mexican-American Correctional Association, National Executive
17 Board, which I believe is concerned about your appointment.

18 Basically, they feel you're insensitive, but the main
19 point, I think, is that they don't feel you understand treatment
20 and rehabilitation. I think I should offer that up.

21 MR. ARMAS: I would respectfully disagree with that.
22 That's part of my job, understanding, I think, that we have to,
23 and try to work with our youthful offenders in the hopes that
24 they will develop and benefit from their mistakes and come back
25 to us as productive citizens.

26 SENATOR CRAVEN: Mr. Chairman, may I ask a question.

27 CHAIRMAN ROBERTI: Yes, Senator Craven, please.
28

1 SENATOR CRAVEN: Mr. Armas, as a member of that
2 Board, you obviously sit in judgment as it relates to the
3 offenders; do you not?

4 MR. ARMAS: To some degree, yes, sir.

5 SENATOR CRAVEN: Do you make a judgment as to whether
6 they should undergo rehabilitation training, or whether they
7 should be -- I don't know, can you let an offender out early by
8 virtue of good conduct or whatever?

9 MR. ARMAS: We try -- I try to recommend the best
10 kind of a program for the individual offender that I'm familiar
11 with offered, you know, through the California Youth Authority.
12 And then, when I come to making a decision, you know, whether or
13 not he's suitable, ready for parole, I do that also.

14 If he is ready to go out on parole, that's where I
15 would want him.

16 If he's not, if he still poses a danger, then --

17 SENATOR CRAVEN: Then back to court.

18 MR. ARMAS: Yes, sir.

19 SENATOR CRAVEN: Are you and your colleagues on the
20 Board the final authority as it relates to taking care of these
21 young offenders?

22 MR. ARMAS: In the sense of --

23 SENATOR CRAVEN: In other words, you make the
24 judgment, or the judgment you make, is that the final judgment?

25 MR. ARMAS: Yes, sir, it is.

26 SENATOR CRAVEN: So, we act or react to what you have
27 said or done, as the case may be.
28

1 MR. ARMAS: Yes.

2 SENATOR CRAVEN: In other words, there's no other
3 jurisdiction that is above your jurisdiction?

4 MR. ARMAS: Only the Governor, sir.

5 SENATOR CRAVEN: Okay, that's fine.

6 Thank you.

7 CHAIRMAN ROBERTI: Any other questions? Senator
8 Mello.

9 SENATOR MELLO: I withdraw my request about putting
10 the letter in the file because it does contain several
11 allegations, but I think I would touch on the questions there.

12 Have you seen Mr. Vasconcellos' letter?

13 MR. ARMAS: No, sir, I have not.

14 SENATOR MELLO: How about the letter from the
15 Mexican-American Correctional Association, National Executive
16 Board?

17 MR. ARMAS: No, sir, I have not seen any letters.

18 I beg your pardon. I did receive a mail-out of a
19 letter from the National Council on Crime and Delinquency.
20 That's the only letter that I am privy to.

21 SENATOR MELLO: The National Center on Institutions
22 and Alternatives, they all oppose your confirmation. I'll just
23 try to paraphrase some of the questions and let you respond to
24 them.

25 MR. ARMAS: All right, sir.

26 SENATOR MELLO: The one from the Mexican-American
27 Correctional Association states that you:
28

1 "... lack a sensitivity toward the
2 Hispanic community, in particular
3 Hispanic wards. You made decisions
4 which display insensitivity, and
5 this appears to be most profound on
6 immigrant and INS cases. YOPB
7 decisions made by Mr. Armas are
8 evidence of his failure to
9 understand treatment and
10 rehabilitation."

11 That's one set of questions. I'll just lump them all
12 together.

13 This other says that you operate:

14 "... on the premise that all
15 juvenile offenders are awful people
16 who deserve the maximum confinement
17 time available, and he conducts
18 hearings with the goal of proving
19 this point. He doesn't believe in
20 time cuts, which deprives Youth
21 Authority personnel of an effective
22 management tool, and deprives wards
23 of incentives for participating in
24 institutional programming. He
25 doesn't carry his share of the
26 caseload, bogging down in arcane
27 details and delaying ward hearings.
28

1 He doesn't get along with other
2 Board members or the Board Chair.
3 He has on more than several
4 occasions made negative remarks
5 about illegal aliens to the effect
6 that they don't deserve Youth
7 Authority services."

8 There are a lot of statements there.

9 MR. ARMAS: Yes.

10 Well, let me say this on that point, I'm very
11 concerned with the influx of persons from other countries
12 into the United States. I have said this once, and probably
13 more than once, that --

14 SENATOR MELLO: Are you talking about undocumented
15 citizens?

16 MR. ARMAS: I'm talking about undocumented persons,
17 especially young people. It seems that an ever increasing
18 number of young people are claiming to be juveniles, for
19 example, when they appear to be quite a bit older, in order
20 to beat the system, so to speak.

21 We also have -- I have a concern with the rise in
22 crime by young Asians, you know. That's a different point,
23 but still, they really are posing a threat, you know, in the
24 robberies that they're committing up and down the state, and,
25 you know, out of the state also.

26 I feel that after the Youth Authority does the best
27 job that they can possibly do in trying to give these young
28

1 people training and treatment, that they should then be
2 turned over to Immigration for proper processing.

3 That's my position on that, and I strongly believe
4 in that.

5 CHAIRMAN ROBERTI: You're talking about
6 undocumented?

7 MR. ARMAS: I'm talking only about undocumented,
8 yes, sir. Only about undocumented people who are in the
9 country illegally in violation of our federal laws.

10 As far as sensitivity, I am of Hispanic origin, and
11 I'm very, very sensitive to the underprivileged, either the
12 inner-city youth, and I was -- I'm a product of that myself,
13 and I try to remember the things that I did myself when I was
14 a youth and gauge some of my decisions accordingly if it
15 fits.

16 SENATOR MELLO: What about your getting along with
17 other Board members?

18 MR. ARMAS: That's all news to me, sir. We work,
19 and we do the best job we can. We have an ever increasing
20 workload and diminishing resources.

21 We handle a fantastic number of hearings each year,
22 all types of hearings. To my best recollection, we're
23 meeting our workload responsibilities, so I don't know quite
24 what the author of that letter is referring to.

25 SENATOR MELLO: Let me go back to the treatment of
26 the so-called young undocumented citizens.

27 You said that you want to provide service,
28

1 rehabilitative services, and then turn them over to
2 Immigration. Of course, there's over a million people here
3 undocumented in the State of California.

4 MR. ARMAS: Yes.

5 SENATOR MELLO: And we seem not be able to really
6 handle that.

7 My parents came here with immigration permits and
8 visas, but they came here legally, as did many others.

9 But if they run afoul of the law, do you treat an
10 undocumented juvenile differently than you would one that's a
11 citizen of the United States as far as rehabilitation?

12 MR. ARMAS: No. As far as deportation goes?

13 SENATOR MELLO: No, you can't deport a citizen, but
14 I mean as far as the rehabilitation of these persons.

15 MR. ARMAS: I just simply refer them to
16 programming, to programming the way we do everyone.

17 But what I'm saying is that there seems to be a
18 basic difference between an immigrant who comes here to
19 improve the quality of his life and to make a contribution,
20 as opposed to another person who comes here to take advantage
21 of other people and commit crimes.

22 I'm very, very concerned, for example, with the
23 drug traffickers what come here.

24 SENATOR MELLO: Yes, and you mentioned Asians. The
25 Asian persons, and usually the whole Asian community, are
26 very law-abiding.

27 MR. ARMAS: That's true.
28

1 SENATOR MELLO: I'm surprised. I have read about
2 some of the Asian gangs in some of the metropolitan areas
3 that engage in this kind of activity.

4 My thought is, when these young people run afoul of
5 the law, we just have to try to work with them to try to get
6 them to enter the mainstream somehow, and not just treat them
7 in a way where they're going to remain and lead to even
8 becoming greater criminals. I think that's what we're doing
9 right now.

10 MR. ARMAS: All right, I respect your view on that,
11 sir.

12 We don't involve ourselves in treatment programs.
13 We only recommend. We look at the end product after a period
14 of time and determine whether that end product is again safe
15 to put back on the street. That's all we do.

16 SENATOR MELLO: Going back to the undocumented
17 again. If they're undocumented, why don't we turn them over
18 to Immigration before we go through the rehabilitation
19 programs?

20 MR. ARMAS: That's a thought, sir. That's a
21 thought, sir.

22 The reason I say that, and I'm not trying to be
23 frivolous, is that we have limited resources, you know. And
24 I think that the first call on those resources should be our
25 own kids.

26 SENATOR MELLO: With limited resources, why are we
27 putting them through a rehabilitation program if they are
28

1 going to be turned over to Immigration to send them back to
2 their country of origin?

3 MR. ARMAS: I can't answer that, sir. It doesn't
4 seem to make much logic.

5 SENATOR MELLO: It doesn't make logic to me,
6 either.

7 Thank you, Mr. Chairman.

8 CHAIRMAN ROBERTI: Is there anyone in the audience
9 in support of the confirmation? In opposition?

10 I'm reluctant to vote against Mr. Armas based on
11 nebulous charges.

12 On the other hand, there have been a number of
13 them, and I would like to pursue them a little bit more.

14 My suggestion, if the Committee is in agreement, is
15 to put you over until next week. I don't want to go on a
16 wild goose chase --

17 MR. ARMAS: All right.

18 CHAIRMAN ROBERTI: -- but on the other hand, I
19 recognize you're Hispanic, so it makes it a little bit more
20 difficult to think that you would be insensitive in the area
21 of minorities. But still, I think we have to pursue it.
22 There have been accusations. I would like to have some kind
23 of specificity.

24 Just a broad brush against you because somebody
25 says you're insensitive, because they don't want you to be
26 appointed for some reason, I can't go along with that.

27 MR. ARMAS: Thank you.
28

1 CHAIRMAN ROBERTI: But if there are specifics, I
2 think I have a duty to try at least to ferret it out.

3 MR. ARMAS: Yes, I would welcome the person who is
4 making these accusations, or making these statements, to come
5 and --

6 CHAIRMAN ROBERTI: We'd be glad to let you see our
7 file.

8 MR. ARMAS: -- or ask them to attend also so that
9 we can have a confrontation if need be, or at least, you
10 know, face-to-face encounter.

11 CHAIRMAN ROBERTI: A person should be able to face
12 his accuser.

13 MR. ARMAS: Thank you.

14 CHAIRMAN ROBERTI: For whatever reason, even
15 legitimate, that somebody doesn't want to come to the
16 hearing, it still makes it difficult for me --

17 MR. ARMAS: I appreciate that.

18 CHAIRMAN ROBERTI: -- to vote against you unless I
19 have specifics.

20 Nevertheless, I think I have a duty to pursue it.
21 If the other Members go along, why don't we put Mr. Armas off
22 until the next meeting, next Wednesday?

23 MR. ARMAS: Okay, sir.

24 CHAIRMAN ROBERTI: And thank you for coming.

25 MR. ARMAS: Thank you very much.

26 CHAIRMAN ROBERTI: that should not be too long a
27 hearing if there are no further accusations. Hopefully, we
28

1 can bring it to a vote at that point.

2 MR. ARMAS: Thank you.

3 CHAIRMAN ROBERTI: Thank you.

4 [Thereupon the Rules Committee
5 acted upon legislative items on
6 the agenda.]

7 CHAIRMAN ROBERTI: Senator Rosenthal is here.

8 Mr. Kevorkian, we will return to Mr. Kevorkian's
9 appointment. Why don't you take a seat, Mr. Kevorkian,
10 and we're going to recess for three to five minutes, and then
11 we will take you.

12 [Thereupon a brief recess was taken.]

13 CHAIRMAN ROBERTI: The Committee will come to
14 order.

15 We have the appointment before us of Ardavast
16 Kevorkian, Member of the State Energy Resources Conservation
17 and Development Commission.

18 Senator Rosenthal had a few questions he would like
19 to ask. He could not make it last week.

20 SENATOR ROSENTHAL: I want to thank the Rules
21 Committee for giving me the opportunity.

22 I want to thank Mr. Kevorkian for making himself
23 available.

24 As the Chair of the Energy and Public Utilities
25 Committee that deals directly with the Energy Commission, I'm
26 kind of concerned about some of the things that are taking
27 place. I would like to get your thinking about some of those
28

1 particular issues.

2 As a result of the conflict in the Persian Gulf,
3 the California Energy Commission is back on center stage,
4 with articles in the paper regarding it.

5 There may be the possibility of war in the Middle
6 East, with oil supplies disrupted and with an energy crisis
7 in our nation.

8 I think that for California, the Commission will
9 have a leading role in dealing with the crisis. I'd like to
10 know whether you have the knowledge and the vision to help
11 lead the Energy Commission through the crisis, and I want to
12 know what you hope to accomplish to help develop a
13 comprehensive State energy policy. Let me move on to some
14 specific questions.

15 In response to the Persian Gulf conflict, I believe
16 that the Energy Commission must take some bold, new
17 initiatives in several areas. I'll just mention the three
18 areas, then I'll give you the opportunity to speak about each
19 one of them.

20 The first one is energy emergency contingency
21 planning. The second is development of alternative fuels.
22 The third is energy conservation.

23 So, let me ask, what specific new initiatives would
24 you propose in contingency planning for California?

25 MR. KEVORKIAN: I'll try to answer that.

26 We do have a contingency planning group in our
27 office that I believe is on top of the situation. What they
28

1 have done is, they have reviewed all the 16 refineries -- I
2 believe it's 16 -- to see what we have there and what it will
3 take to look for other systems.

4 They have also -- they have a set aside program
5 which is one that would be very critical if -- that would be
6 so that each refinery would be required to set aside a
7 limited amount of oil for strategic purposes.

8 They were in full communication with all of the oil
9 systems in the State of California, and they keep the
10 Governor, and they keep the Legislature of the people, and
11 the members of the residents of California well aware of
12 this.

13 I don't know right now, since I'm not totally
14 familiar with all the avenues that they take, what I would
15 suggest that they perform, but they certainly are doing what
16 I consider a admirable job on maintaining a look-see on what
17 we really have and what we would have to have in various
18 types of emergencies.

19 They're on a second stage now. I'm not sure of the
20 name of that stage, but they have been moving in a direct --

21 SENATOR ROSENTHAL: Does California have a
22 strategic petroleum reserve?

23 MR. KEVORKIAN: No, no.

24 SENATOR ROSENTHAL: We don't.

25 MR. KEVORKIAN: We don't have it. I'm just saying,
26 that there's a set aside program that could be used that we
27 would be initiating, asking the oil refineries, the oil
28

1 companies, to set aside certain amounts in case of steps of
2 emergency.

3 SENATOR ROSENTHAL: Tell me your thoughts about the
4 development of alternative fuels. You know, since the 1970s,
5 and that's almost 15-20 years ago, we had similar kinds of
6 problems in terms of the oil problem. We didn't do anything
7 about it. We didn't do anything about it nationally, and we
8 certainly didn't do anything about it statewide in terms of
9 an energy policy.

10 Tell me what you think we ought to do about the
11 development of alternative fuels.

12 MR. KEVORKIAN: Well, we have that program going
13 now, and we're just going to have to push it harder.

14 What I mean by the alternative fuels are, one, the
15 alcohol such as methanol and ethanol. We did not have that
16 back in the '70s, and we have a pretty good grip on that now.

17 We have a program where we're buying buses for
18 schools that are methanol operated buses. Also, secondly, in
19 compressed natural gas, another fuel, being used.

20 Additionally to that, we are in research on fuel
21 cells which could be used in transit systems, and we're also
22 certainly involved in the electrical vehicle programs.

23 We would encourage, as the State would, so get more
24 people in ride sharing, to better the transit systems.

25 But your question was based on renewable fuels, and
26 we are positively looking at that, and I'm sure you're aware
27 of that program. It's well-advertised.
28

1 SENATOR ROSENTHAL: What new initiatives should we
2 be involved in in terms of energy conservation?

3 MR. KEVORKIAN: On energy conservation, again, I'll
4 say this is the most important because energy conservation
5 does two things. One, it clears up the environment by
6 reducing emissions by conserving on the type of systems or
7 components that use the fuels.

8 We have a conservation group in our office, which
9 I'm on that committee, which is an example, and we'll just go
10 further ahead on it more so, where we are educating various
11 governments, city governments, on the method of conservation
12 of systems in their State buildings, whether it be air-
13 conditioning, or the heating, or lighting, or whatever.

14 We have a strong program going now with the
15 schools. I was surprised to listen, besides the air-
16 conditioning, insulation, and the lighting systems, which is
17 a very positive method, that they even have a low temperature
18 dishwasher method. Instead of using 180 degrees, they're
19 using 140 with a certain detergent. That's cost saving;
20 that's conservation.

21 And finally, we have the large detention systems in
22 hospitals that we are sending out information. We have
23 presented a booklet to them of all types of energy
24 conservation devices.

25 SENATOR ROSENTHAL: So, you would support requiring
26 new standards, both in commercial buildings --

27 MR. KEVORKIAN: Yes.
28

1 SENATOR ROSENTHAL: -- and in homes, and in
2 schools, and in hospitals --

3 MR. KEVORKIAN: That's right.

4 SENATOR ROSENTHAL: -- in terms of lighting, in
5 terms of heating, in terms of --

6 MR. KEVORKIAN: Insulation, right.

7 SENATOR ROSENTHAL: Do you believe that there's
8 been an oil price gouging, oil industry price gouging?

9 MR. KEVORKIAN: Well, I believe that there has been
10 to a certain degree, but I must consider what the United
11 States is up against now.

12 For myself, personally, I feel that I'm willing to
13 pay what has to be paid.

14 For those people that cannot afford the gas, or
15 because if you want to call it price gouging, there are still
16 listings of gas stations and service stations that have a
17 lesser price charge on their gasoline, and they'll have to
18 follow that.

19 Finally, in conclusion, on this so-called price
20 gouging, we had part of that going on back in the '70s, and
21 that's when the PVEA was created, the Petroleum Violation
22 Escrow Account. And I'm sure that audits will be made sooner
23 or later, and those oil companies that got into the so-called
24 gouging or upping their price, they will pay the penalties as
25 necessary.

26 SENATOR ROSENTHAL: Would you be in favor of
27 seeking penalties from California companies if, in fact, we
28

1 become aware that there was some industry price gouging in
2 California?

3 MR. KEVORKIAN: Well, I myself would consider that
4 that's the purpose of the PVEA account.

5 SENATOR ROSENTHAL: The PVEA was a federal account.

6 MR. KEVORKIAN: It would be, yes, state-wise.

7 SENATOR ROSENTHAL: I think I'm asking whether or
8 not you would support penalties if in fact we discovered that
9 there was, in fact, price gouging.

10 MR. KEVORKIAN: I would certainly do that.

11 SENATOR ROSENTHAL: If we have this oil shortage,
12 and gasoline prices sky rocket, do you believe we should help
13 low-income households?

14 MR. KEVORKIAN: On what degree, low-income
15 households? For funding? For purchasing the gasoline?

16 SENATOR ROSENTHAL: Well, because gasoline doesn't
17 necessarily just deal with transportation. We have some
18 other kinds of things that take place in terms of households.

19 MR. KEVORKIAN: Pardon me?

20 SENATOR ROSENTHAL: In other words, I want to know
21 whether you're in support of helping low-income households in
22 terms of sky rocketing oil or energy costs?

23 MR. KEVORKIAN: Well, I would be if we had a --
24 we'd have to set up a decent program to make sure that that
25 would be handled correctly.

26 We had -- we've gone through periods of time of
27 some types of gasoline coupons, and so forth, based on the
28

1 need. And those, as I mentioned before, those people that
2 rely so heavily on transportation and have low incomes would
3 certainly have to find some vehicle or some measure to help
4 those people out..

5 SENATOR ROSENTHAL: But there are other kinds of
6 costs to low-income persons as a result of what happens in
7 the energy field.

8 What I'm trying to elicit from you is whether or
9 not you think we should have programs to help low-income
10 families pay for the rising fuel costs?

11 MR. KEVORKIAN: Well, if I understand you correctly
12 -- I'm getting a little hard to understand that question, I
13 guess -- but the utility companies have programs where
14 they're educating the low-income household on how to put in
15 conservation measures and efficiency measures in their homes.

16 Are we talking on that same --

17 SENATOR ROSENTHAL: No.

18 Right now, for example, the Department of Economic
19 Opportunities provides certain kinds of payments for certain
20 kinds of programming.

21 MR. KEVORKIAN: Right.

22 SENATOR ROSENTHAL: And what I'm trying to find out
23 from you is whether or not you support the DEO kinds of
24 programs? Or whether you think we ought to have some tax
25 credits, or whether you think there ought to be some price
26 controls? Just what you think ought to happen if oil and
27 energy prices sky rocket, go beyond where they are today.
28

1 MR. KEVORKIAN: If they did sky rocket, we would
2 have to have some emergency type measures, including low-
3 income housing.

4 I'm not prepared now to respond to the type of
5 program that would be initiated.

6 SENATOR ROSENTHAL: Let's go on to another subject.

7 In your recent letter to the Senate Rules
8 Committee -- and you sent me a copy, for which I thank you --
9 you stated that in your tenure at the Commission, you would,
10 quote:

11 " ... do everything possible to
12 promote programs and policies that
13 will meet the State's energy needs
14 in an environmentally sensitive
15 manner."

16 MR. KEVORKIAN: Right.

17 SENATOR ROSENTHAL: Now, I know that you're on the
18 Conservation Program Committee --

19 MR. KEVORKIAN: Yes.

20 SENATOR ROSENTHAL: -- where there's great
21 potential for environmental conservation initiatives,
22 particularly with respect to air pollution in Southern
23 California.

24 What are some of the specific new conservation
25 initiatives you would support to help the South Coast Air
26 Quality Management District meet its clean air goals?

27 MR. KEVORKIAN: For that South Coast Air Quality
28

1 District to meet the goals, and certainly their goals are to
2 reduce the emissions which happen to be their major problem,
3 as again, I'll come back to conservation.

4 As you get into new fuels technologies, alternate
5 programs for types of vehicles, whether they be the methanol,
6 or compressed natural gas, electric, those in themselves help
7 reduce some of the pollution.

8 But getting into the power plants, the power plants
9 now that we perform siting on have certain requirements to
10 meet as far as air pollution standards go. And as far as
11 meeting those requirements, there are new technologies in the
12 combined cycle gas turbines, there are new other types of
13 equipment that are energy conservation that reduce emission,
14 there are catalytic beds that reduce the emissions. All
15 those programs will have to be looked at very strenuously to
16 make sure that we can meet the goals that the South Coast Air
17 Quality has set forth.

18 SENATOR ROSENTHAL: What new programs should
19 utilities undertake to mitigate power plant emissions?

20 MR. KEVORKIAN: There is a program which started up
21 about the time I came into the office called a collaborative
22 process. And this particular process is to get the utilities
23 and the end users -- whereas, the utilities are actually
24 driving the program -- to again conserve the use of
25 electricity. By conserving the use of electricity, the need
26 for the power plant reduces, and the need for the emissions,
27 in turn, reduce.
28

1 SENATOR ROSENTHAL: Have you read anything about
2 the merger of Edison and San Diego?

3 MR. KEVORKIAN: Yes, I have.

4 SENATOR ROSENTHAL: Tell me what you think of the
5 Edison mitigation plan.

6 MR. KEVORKIAN: I have a little paper I worked up
7 on this. Could I review that?

8 SENATOR ROSENTHAL: Sure.

9 MR. KEVORKIAN: Well, let me try to explain it.

10 SENATOR ROSENTHAL: All right.

11 MR. KEVORKIAN: What is happening with this merger
12 is that Southern Cal. Edison wants to take over San Diego Gas
13 & Electric. They are two separate utilities now. They both
14 have their own air pollution control problems.

15 Now, if they do merge, I visually see that what's
16 going to happen in the South Coast air basin, there is going
17 to be an increase in pollution on peak loads especially and
18 possibly on the base load by not allowing San Diego Gas &
19 Electric now, which is in an NOI which is a Notice of Intent,
20 to build a power plant at any one of five sites. So, if
21 those are dissolved, that means that the Southern Cal. basin
22 has to pick up the load. And if they do that, then certainly
23 there would be more emissions.

24 Another thing is the rate payer. San Diego as well
25 as Southern Cal. may find themselves paying more.

26 There are a few other areas that I'm not -- I don't
27 have all the answers on. I know that the PUC, the City of
28

1 San Diego, and another agency are not in agreement at this
2 time with the merger.

3 SENATOR ROSENTHAL: Let's talk just briefly about
4 alternative fuels.

5 We have a dependency on petroleum for
6 transportation in this state, and I think that it's time to
7 break that habit. I think Chairman Imbrecht has indicated
8 that we need to do that.

9 In your earlier testimony to the Rules Committee,
10 you noted your role on the R&D Committee, which has
11 responsibility for alternative fuels, and described in detail
12 current alternative fuel activities.

13 I need to ask you what new alternative fuel
14 programs would you propose to accelerate their use in
15 California?

16 MR. KEVORKIAN: Well, I mentioned as many as I know
17 of. When you say "new", I haven't mentioned hydrogen as a
18 component or an element.

19 But we're talking about the alcohols. We talked
20 about the electric vehicles. We talked about compressed
21 natural gas.

22 SENATOR ROSENTHAL: Do you think any incentives are
23 needed or mandates in order to bring about recommendations
24 for a change?

25 MR. KEVORKIAN: Well, on some of these programs in
26 the alcohol program -- as a matter of fact, the alcohol and
27 the compressed natural gas and the electric vehicle are being
28

1 sponsored by utilities as well as the automobile industries.

2 Our office is involved, certainly, with all these
3 programs. We have some funding which we allow in the energy
4 technology advance program, and we are going as far as we can
5 go based on our funding. However, we are in constant
6 communication with the automobile companies that are doing a
7 great amount of work, and the electric vehicles that's being
8 done by both the utilities as well.

9 SENATOR ROSENTHAL: One more item on the
10 alternative fuels.

11 The oil companies have suggested that we can rely
12 on reformulated gasoline --

13 MR. KEVORKIAN: That's right.

14 SENATOR ROSENTHAL: -- as their answer to
15 alternative fuels.

16 Do you have any thoughts on that?

17 MR. KEVORKIAN: Well, reformulated gasoline is one
18 that you're removing the lead out of the leaded gas that we
19 now have.

20 I would say that from what I have read, I'm not a
21 chemist, but the emissions of the reformulated gasolines are
22 still higher than those that are alcohol.

23 SENATOR ROSENTHAL: Do you think that California
24 should be allowed to set higher vehicle fuel economy
25 standards than imposed by the federal government?

26 MR. KEVORKIAN: Well, I believe the State should
27 set as many standards as we feel we can accommodate.
28

1 SENATOR ROSENTHAL: That didn't answer my question.
2 Do you think that we should be able to set
3 standards higher than the federal government in terms of
4 vehicle fuel economies?

5 MR. KEVORKIAN: Yes, I do.

6 SENATOR ROSENTHAL: If we had the authority, what
7 standards would you recommend?

8 MR. KEVORKIAN: Well, for vehicle economy, the only
9 -- right now, the only thought that's coming to me is
10 increasing the use of the transit systems by more people per
11 vehicle, employing additional transit systems that we do not
12 have yet. Now, any of the electrical vehicles systems --
13 trains, cars, and so forth -- they are advantageous.

14 SENATOR ROSENTHAL: Should we be able to say to the
15 automobile manufacturers that in California, we will only
16 accept automobiles that get 40 miles to a gallon, for
17 example?

18 MR. KEVORKIAN: Well, I don't know if the residents
19 of the State of California would want to do that at this
20 time, but it would be a good --

21 SENATOR ROSENTHAL: I'm trying to get your idea of
22 what you think we ought to do in terms of --

23 MR. KEVORKIAN: Well, I believe that conservation
24 measures are, to me, more important; although, the cars use
25 most of the petroleum. Conservation members -- conservation
26 measures could offset some of these.

27 To say that all vehicles have to get 40 miles to
28

1 the gallon is a very large step at this time.

2 SENATOR ROSENTHAL: But I think if our automobile
3 manufacturers in this country don't do it, Japan will.

4 MR. KEVORKIAN: We're moving towards it, Senator.
5 I don't say we could do it all tomorrow.

6 SENATOR ROSENTHAL: Finally, I'm very concerned
7 about public participation at the Energy Commission, which is
8 the reason that I established an Intervenor Program.

9 What proceedings have you been in that included
10 intervenors?

11 MR. KEVORKIAN: We have a number of intervenors
12 that come in on our biweekly meetings, that come in on
13 whatever subjects that we're discussing.

14 SENATOR ROSENTHAL: Specifically, what programs
15 have you been involved in in which there were intervenors,
16 and what benefits have you seen from the program, or what
17 problems did you see in the program?

18 MR. KEVORKIAN: Well, the intervenors usually come
19 in, like, on a geothermal system or something else. These
20 people that have problems with the system that may affect
21 them, or -- I just can't -- right now, I'm sorry, I cannot
22 put a finger on exactly what the items are, but we allow
23 intervenors to come in and discuss the system.

24 SENATOR ROSENTHAL: I know that, as a result of
25 legislation that I carried.

26 What I'm trying to find out is, is it working?
27 Have you been directly involved with it?
28

1 MR. KEVORKIAN: I have been involved. We have
2 funded intervenors. We have helped them work out some of
3 these problems, or helped them in developing as things
4 related to energy.

5 SENATOR ROSENTHAL: There are some of the
6 environmental groups that claim that the program could be
7 improved. Since I'm not there, I don't know how to do that.

8 Can you tell me what you think is, perhaps,
9 lacking, or how we can improve that program?

10 MR. KEVORKIAN: Well, I think we're -- I think
11 we're moving on it correctly.

12 A good example now does come to me. We had an
13 intervenor coming in on energy efficiency and building
14 construction. And that energy efficiency program on
15 residential building materials or nonresidential certainly is
16 something that we wind up with, let's say, setting standards
17 based on these programs. And the intervenor would be the
18 person coming in there that possibly wouldn't like the strict
19 standards that we would be setting up. Individuals would be
20 coming about separately.

21 We do not just set the standard because we, our
22 office, has decided, and we have many members of those
23 committees to review those officially, standards.

24 SENATOR ROSENTHAL: I'd like to thank the Rules
25 Committee for permitting me this opportunity, and I want to
26 thank Mr. Kevorkian for being here to give me some sort of an
27 idea of what you'll be like on the Commission, if in fact you
28

1 are to be there.

2 Thank you very much.

3 CHAIRMAN ROBERTI: Thank you very much. We
4 appreciate your questions.

5 Mr. Kevorkian is now before us for a vote. Do I
6 hear a motion?

7 SENATOR CRAVEN: So move.

8 CHAIRMAN ROBERTI: Senator Craven moves that the
9 nomination be recommended to the Floor.

10 Secretary will call the roll.

11 SECRETARY KENDRICK: Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY KENDRICK: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY KENDRICK: Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY KENDRICK: Senator Craven.

18 SENATOR CRAVEN: Aye.

19 SECRETARY KENDRICK: Senator Roberti.

20 CHAIRMAN ROBERTI: Aye.

21 The vote is five to nothing; confirmation is
22 recommended to the Floor.

23 MR. KEVORKIAN: Thank you very much. Thank all of
24 you.

25 CHAIRMAN ROBERTI: Very good, Mr. Kevorkian.

26 The next appointment is Alfredo C. Bautista, Member
27 of the Youthful Offender Parole Board.
28

1 MR. BAUTISTA: Good afternoon, Senators.

2 CHAIRMAN ROBERTI: Good afternoon, Mr. Bautista.

3 We'll ask you what we ask all the Governor's Appointees, and
4 that is why you feel you're qualified to assume/maintain this
5 position?

6 MR. BAUTISTA: Well, Senator, I think that I bring
7 to the position a very broad and diverse background and level
8 of experience.

9 I've -- one of the requirements that I think of the
10 position in the short time that I've been there is really a
11 sensitivity of the wards and the plights that they're going
12 through.

13 I think that in my background, I've worked
14 extensively with the Asian-Pacific community, particularly
15 the Filipino community. As you know on my resume, I worked
16 for a number of years with the Governor's Office in the
17 Office of Community Relations. I worked extensively up and
18 down the state with the Asian-Pacific community, the
19 Filipino community, on a variety of issues. And think that
20 gives me the qualification of being -- not only the practical
21 experience, but being culturally sensitive. As you're aware,
22 I am of Filipino heritage.

23 I have done extensive, in my education, I've done
24 extensive research, more particularly in graduate school,
25 with the Asian-Pacific community, the Indo-Chinese community,
26 and I think that I do meet the qualifications as required by
27 statute of somebody coming from the community that does offer
28

1 a broad background and level of experience.

2 CHAIRMAN ROBERTI: Thank you very much,
3 Mr. Bautista.

4 Are there any questions?

5 Is there any opposition in the audience?

6 Then I think you're going to get off easy.

7 MR. BAUTISTA: Thank you.

8 CHAIRMAN ROBERTI: Do I hear a motion?

9 SENATOR CRAVEN: Move.

10 CHAIRMAN ROBERTI: Senator Craven moves.

11 Secretary will call the roll.

12 SECRETARY KENDRICK: Senator Beverly.

13 SENATOR BEVERLY: Aye.

14 SECRETARY KENDRICK: Senator Mello.

15 SENATOR MELLO: Aye.

16 SECRETARY KENDRICK: Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY KENDRICK: Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY KENDRICK: Senator Roberti.

21 CHAIRMAN ROBERTI: Aye.

22 The vote is five to zero; confirmation is
23 recommended to the Floor.

24 Congratulations.

25 MR. BAUTISTA: Thank you, Senators.

26 CHAIRMAN ROBERTI: The next appointment is Mr. John
27 W. Gillis, Member of the Board of Prison Terms.
28

1 Mr. Gillis, we'll ask you what we ask all the
2 Governor's Appointees, and that is why you feel you're
3 qualified to maintain this position?

4 MR. GILLIS: Thank you, Senator.

5 Very briefly, my educational background, I hold a
6 Master's Degree in public administration. I've done graduate
7 work in law. I've also taught criminal law.

8 My work experience, I have 26 years of law
9 enforcement with the Los Angeles Police Department. In my
10 various assignments, I've worked Homicide, other
11 investigative assignments.

12 I have spent -- I've done a lot of studying of the
13 criminal justice system. I'm very familiar with everything
14 within the criminal justice system as far as terminology,
15 phraseology.

16 The learning curve in the position for me would be
17 relatively small.

18 I have also been active in the community. I've
19 served on various boards and commissions. I've served on the
20 HUD Committee. I've served on the Library Board of Trustees,
21 so I have been active for a number of years.

22 I think I'm very well qualified. I meet the
23 requirements.

24 CHAIRMAN ROBERTI: Very good.

25 Is there any opposition in the audience?

26 Senator Mello.

27 SENATOR MELLO: I just to ask a couple of
28

1 questions.

2 Some of our Members have been bringing this up.
3 They're probably more aware of it than I am.

4 It appears that a lot of the people we return to
5 prison are violators of parole. I guess some 40 percent or
6 so. And it just seems like, I mean, our population in prison
7 now is about 100,000 people. It just seems like the
8 revolving door keep going and people just aren't able to -- I
9 mean, they violate the parole, then they come back.

10 It seems to me that at that point, we ought to have
11 a plan that would try to -- and I'm impressed with what I've
12 seen on the East Coast, they call it the Client Specific
13 Plan. You're probably aware of it. They give more intense
14 supervision and try to reunite the offender with a job and
15 with their families, and give them daily supervision, and try
16 to keep them working and at home, rather than having them go
17 back to prison, which saves the taxpayers a lot of money, if
18 they're not of the violent type where they're going to be
19 creating a violent crime.

20 Do you have any thoughts about the large increase
21 in parole violators that return to prison, and shouldn't we
22 be offering some other programs to try to defer them into
23 other programs?

24 MR. GILLIS: Senator, I believe we should be
25 looking at alternative methods as far as those who are
26 violators, the recidivists who are violators that are not the
27 violent type. I think we should be looking at other
28

1 alternatives to returning them to prison.

2 SENATOR MELLO: Such as? What would you recommend
3 that we look at?

4 MR. GILLIS: Well, there are some new studies that
5 have been done. One is where the radio transmitters are
6 used. The other is where the individual --

7 SENATOR MELLO: Radio transmitters, that's to
8 follow or track them?

9 MR. GILLIS: Yes, yes,, sir.

10 SENATOR MELLO: Like they do endangered species of
11 birds, or whales, or things like that?

12 MR. GILLIS: They are given a certain area to
13 remain in. There are methods of calling and checking to see
14 whether or not they've left.

15 Being new to the Board, I've not had an opportunity
16 to study all of those, but I do think that there are other
17 methods that we can use.

18 SENATOR MELLO: Have you heard of this Client
19 Specific Plan? I think it's in New York, and New Jersey, and
20 states like that on the East Coast.

21 MR. GILLIS: No, sir, I haven't.

22 SENATOR MELLO: Okay, well, thank you.

23 CHAIRMAN ROBERTI: Thank you, Senator.

24 Is there any opposition in the audience?

25 SENATOR CRAVEN: Move Mr. Gillis.

26 CHAIRMAN ROBERTI: Senator Craven moves Mr. Gillis'
27 confirmation be recommended to the Floor.
28

1 Secretary will call the roll.

2 SECRETARY KENDRICK: Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY KENDRICK: Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY KENDRICK: Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY KENDRICK: Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY KENDRICK: Senator Roberti.

11 CHAIRMAN ROBERTI: Aye.

12 The vote is five to zero; confirmation is
13 recommended to the Floor.

14 Congratulations.

15 MR. GILLIS: Thank you.

16 CHAIRMAN ROBERTI: The next appointment is that of
17 Diana Marshall, Commissioner, Workers' Compensation Appeals
18 Board.

19 Nice to see you, Ms. Marshall, and Senator Greene
20 is here, the Chairman of the Senate Industrial Relations
21 Committee.

22 We'll ask you, Ms. Marshall, what we ask all the
23 Governor's Appointees, and that is why you feel that you are
24 qualified to assume this position.

25 And I would also like to mention to you and to
26 Mr. Margosian, who was set for vote today, that your
27 appointments are to a board that's highly controversial, as
28

1 you probably know, and we are trying to work out difficulties
2 as far as Board composition, to be quite up-front about it.
3 They just haven't been totally resolved at the moment.

4 Nevertheless, I think you're here, and we should
5 have the hearing, and so I ask the question.

6 In my mind, my choices are either to confirm or to
7 put over until December the actual vote. We're trying to
8 negotiate that right now, but I thought I should tell you
9 that up front.

10 MS. MARSHALL: Thank you, Senator, Senators.

11 Prior to my current appointment, I was Executive
12 Director of the State Job Training Coordinating Council.
13 That body is responsible for the development policy for the
14 \$200 million Job Training Partnership Act program in
15 California.

16 Briefly, one of the challenges that we faced in
17 that program recently was to fashion a framework for the
18 administration of the Economic Dislocated Worker Act program,
19 federal program, new monies coming into the state. And in
20 that effort, it was necessary to forge a consensus, and we
21 did, between community colleges, vocational training schools,
22 EDD, private industry councils, employers, organized labor,
23 and of course the Legislature.

24 It was my work, I think, in this field which has
25 brought to you support letters from Mr. Paul Varacalli,
26 Public Employees Union, and Frank Gallegos of the Teamsters
27 Union in the Watsonville area.
28

1 Sometime prior to that appointment, I was a Deputy
2 District Attorney in Kern Country, and I tried numerous
3 felony and misdemeanor jury trials. I have a great deal of
4 experience with rules of evidence, presumption of law,
5 burdens of proof, and the utilization of expert testimony in
6 the legal arena. I have done appellate work, researched and
7 prepared and argued appellate briefs.

8 I believe it is a combination of these two
9 experiences which makes me qualified for this Board.

10 CHAIRMAN ROBERTI: Thank you, Ms. Marshall.

11 Are there questions?

12 SENATOR MELLO: Mr. Chairman, I have several
13 questions. I've had all these questions, I believe, asked to
14 every appointee, mainly because of my great concern for
15 what's happening to the Workers' Compensation Appeals Board.

16 I'm just appalled at the way they operate, first of
17 all. I understand that the unopened mail is now measured by
18 quarters. A few years ago, they were giving it to us in
19 feet. They measured the mail by how many feet high it was,
20 and it reached in one regional office some 250 feet high.
21 That was about two years ago. Now they've eliminated, as I
22 understand it, the feet, and they say we're behind in
23 quarters. Which means, when a case comes up, the judge
24 himself has to go in with some clerks to go through a lot of
25 mail, to try to find reports from doctors and medical
26 reports, and other claims.

27 The number of unfilled judges and teams, which
28

1 really slow up the whole process.

2 I'm asking a series of questions. You can just
3 comment on them.

4 The backlog that's there within the Appeals Board,
5 up to one year delay in some regions of getting a case heard.

6 My district offices get a lot of people that come
7 in, injured workers who were injured. They were
8 hospitalized. And at this point, no one has contacted them
9 for two or three months. Finally, the bill collectors are at
10 their door, and no one has ever begun to process a claim.
11 And I have to try to intervene, at least tell them where to
12 go.

13 And yet, California has the highest workers'
14 compensation rate in the whole nation, and the lowest
15 benefits. There's really something wrong with the system.

16 I have people yelling at me from the employers'
17 point of view and the employees' point of view.

18 And I don't know, I think Mr. Rinaldi, who we
19 confirmed some time ago before knowing too much about what he
20 was going to do, is part of the problem, because I don't
21 think he's there to make it work on behalf of the injured
22 worker. That's my feeling mainly because he just hasn't
23 moved actively and aggressively to solve some of these
24 problems.

25 What are we going to do? I'm just reluctant to
26 confirm any appointee.

27 Your term goes on until 1996. That's two years
28

1 after the next elected Governor leaves office. So, Governor
2 Deukmejian's appointee will serve until April of 1996.
3 Some how, I think someone has to take the grips.

4 To me, it's an embarrassing situation that we have
5 in California, a workers' compensation program that really
6 doesn't respond to the injured worker at all. I mean, what's
7 wrong with it. And what are you going to do to change it?

8 I'd appreciate hearing about how this backlog of
9 mail, if I get 85,000 letters a year at my office -- I just
10 said that in another matter recently -- and if I didn't open
11 my mail every day, I would be recalled. I couldn't stay in
12 office.

13 Yet this Board goes on with, I guess, just not
14 caring about aggressively pursuing items that properly should
15 be addressed for injured workers.

16 SENATOR BEVERLY: May we have the question read
17 back?

18 [Laughter.]

19 SENATOR MELLO: I'll repeat the question.

20 Let me apologize. I do not want to take the
21 Board's time of having her answer every question
22 individually, because that would just take a long time, and I
23 didn't want to put her through that or the Rules Committee.

24 I just want to let you know my feelings, which
25 means I'm not looking very kindly on any of these appointees
26 unless they come up with a plan that's going to change
27 things and they guarantee it with a performance bond.
28

1 SENATOR CRAVEN: Why don't we let Ms. Marshall
2 cover that area?

3 SENATOR MELLO: That's what I plan to do right now.

4 MS. MARSHALL: Senator, I understand your concern
5 for the backlog and the mass amount of paper at the trial
6 level, and I share that concern.

7 But -- and I don't want to appear to duck the
8 question, but there's -- as a member of the Workers' Comp.
9 Appeals Board, I would have a limited opportunity to
10 influence that or impact that. The administration of the
11 trial court level, the Workers' Comp. Appeals Board level, as
12 you describe it, is the responsibility of the Department of
13 Industrial Relations and the Administrative Director.

14 We do have a new Administrative Director who I know
15 is working very hard to get -- to put the reforms, as the
16 Legislature enacted last year, into place.

17 I can say that it has been my observation that the
18 amount of paperwork and the complexity of the paperwork does,
19 to a certain extent, contribute to that backlog. And as we
20 move ahead and look at regulations, that is the small part or
21 the small impact we would have on that, I can assure you that
22 I will do everything I can, in my comment or in my votes, or
23 whatever way I have to impact that, to make sure that it is
24 easier and more simple for the injured worker to get into
25 court and to, in essence, have his day in court.

26 SENATOR MELLO: What does the injured worker do in
27 the meantime? Their home is being attached and the bills are
28

1 piling up against them.

2 MS. MARSHALL: I'm not suggesting to you that the
3 new reform legislation is a panacea either, or that it can
4 resolve all those problems.

5 I can just tell you of my individual concern for
6 that, because I understand the injured worker. He has
7 mortgages to pay; he's got, you know, kids that need to be
8 taken care of; he's got his own medical bills if, for some
9 reason, those aren't being paid immediately. And if he's out
10 of work, that's of great concern, to get his case heard, or
11 to get a settlement, or get it arbitrated.

12 I can only assure you that to the extent that I
13 have some impact on that, I would -- I would do what I could
14 to reduce that backlog.

15 SENATOR MELLO: The impact you would have, I think,
16 would be, you're appointed by the Governor, and to go to the
17 Governor, and then with the Governor, go to the head of the
18 Department, Mr. Rinaldi, and try to get it changed around.

19 Either we have to do one of two things. I'm for
20 making the system work better, but why are we charging these
21 high rates and not delivering the services? Or, why are we
22 paying such low benefits to the injured workers? I mean,
23 it's really appalling, I think.

24 Thank you, Mr. Chairman.

25 CHAIRMAN ROBERTI: Thank you, Senator.

26 Are there any other questions of Ms. Marshall?

27 SENATOR CRAVEN: Let me ask her a question.
28

1 CHAIRMAN ROBERTI: Senator Craven.

2 SENATOR CRAVEN: I can remember the situation to
3 which Senator Mello referred about the, you know, measurement
4 of the paper barrage that they'd had, and I think that was
5 the meeting they also talked about the clock didn't work, or
6 something like that.

7 Do you remember that?

8 SENATOR MELLO: Absolutely.

9 SENATOR CRAVEN: But regardless of that, is there
10 anything systemically that you've run into that the infusion
11 of money would not correct?

12 MS. MARSHALL: Any systemic barriers?

13 SENATOR CRAVEN: Well, in other words, there is or
14 has been a deplorable situation which has existed, and I
15 think that the judges who came in and testified said we need
16 more judges; we need this, and we need that; we don't have --
17 the paper machine doesn't work, or whatever. And all of
18 those things, I'm sure, were true, but there seems to be a
19 reticence to expend perhaps more funds to take corrective
20 action, which seems to be rather apparently needed, in order
21 to make the change-arounds that we need.

22 MS. MARSHALL: I think that my view is that the
23 arbitration component of the new reform legislation will help
24 a certain extent, because I have seen cases where there are
25 threshold issues, such as statute of limitations issues, or
26 whether or not it arose in the course of employment kinds of
27 issues, that, if those could be resolved early on, would save
28

1 the necessity of lengthy medical reports, lengthy
2 deliberations on those.

3 And so, I think I can see some hope, perhaps, in
4 some of the reform measures to systemically help that.

5 SENATOR CRAVEN: I get the impression, based on the
6 background material which you've told us about, that really
7 you've been rather close to and, if I may go so far as to
8 say, on the side of most of the people with whom you will be
9 dealing, because you've worked in areas of government dealing
10 with people, trying to take care of them -- if I can use the
11 term -- on the compassionate side of government. So, you're
12 no stranger to problems. You obviously have an empathy for
13 the people who are befallen by those problems.

14 I would think, from that standpoint, you would be
15 very, very comfortably situated in that job, and as an
16 attorney, would operate in the highest degree of competency.

17 MS. MARSHALL: Thank you, Senator. I appreciate
18 that.

19 CHAIRMAN ROBERTI: Is there anyone in support of
20 the nomination? Is there anyone in opposition to the
21 nomination?

22 Excuse me, Senator Greene wants to say something in
23 support.

24 SENATOR GREENE: Mr. Chairman and Members, I'm here
25 to speak on behalf of Ms. Marshall the individual. I'm not
26 here to speak in terms of any issues which have come up or
27 will come up, or anything of that nature.
28

1 I've worked very, very closely with Ms. Marshall.
2 I know her very, very well. And I'm going to describe her
3 like politicians describe people: her word is excellent.
4 I've never known her once to go back on her word. I've never
5 known her once to under or over represent her word.

6 She is loyal. She follows through. She does not
7 blow things up. She does not underblow them. Anything she
8 says she will do, she will do.

9 She doesn't deal on the basis of philosophy, or on
10 the basis of likes and dislikes. She's a very, very fine
11 person. I found her excellent to work with as a politician,
12 and I mean that sincerely.

13 I found her so excellent, I really didn't deal with
14 the philosophy, didn't really care, because the relationship
15 was so straight-forward and so right where I would be pleased
16 to have it that I had no reason to deal otherwise.

17 Anything I asked her to do, investigate and I would
18 follow up, she would investigate. Anything I asked her to
19 represent, she should represent. Whether it was her thinking
20 or not, she would represent, "Now, this is the thinking that
21 I've gotten from Senator Greene."

22 As far as I know, she has no knowledge or no
23 experience in this area, but let me tell you, she is a quick
24 learner. She has a full set of brains, and she works hard.
25 She works conscientiously.

26 I have a great deal of admiration and respect for
27 her as a human being and as a person. As I said, philosophy
28

1 aside, politics aside, what she has done in the past, what
2 she might do in the future aside, she is a person that I have
3 no hesitancy as an individual in terms of saying whatever job
4 you gave her, I feel fully comfortable based upon what my
5 experience has been. And let me say this, it's been over
6 more than four years.

7 I feel whatever assignment you give this lady,
8 unless she would do business with you differently than she's
9 done business with me, and/or people with whom I'm associated
10 in terms of the Job Training Coordinating Council, unless she
11 did it differently, she would do a superior job. Whether it
12 would be to your liking, if you were on the other side, you
13 can bet that she would hard working the other side. If you
14 were on the same side, you can believe that she would work
15 hard working on the same side.

16 However, I've found her to be a person that does
17 the job rather than working on individual sides.

18 That's all I have to say.

19 CHAIRMAN ROBERTI: Thank you, Senator. That's a
20 very fine endorsement.

21 MS. MARSHALL: Thank you.

22 CHAIRMAN ROBERTI: Is there anyone in opposition?

23 MR. HENNING: Mr. Chairman, Members of the
24 Committee, Jack Henning, California Labor Federation,
25 AFL-CIO.

26 We are opposed to her confirmation for two reasons.
27 One deals with her hostile attitude toward our organization
28

1 and the national AFL-CIO, and a critical program that was
2 instituted by both the national and the state movement in
3 collaboration. The second deals with the history of the
4 Workers' Compensation Appeals Board and the political
5 depravation we have suffered these past years.

6 On the first point, in 1987, in collaboration with
7 the national body, with its formal training program which is
8 known as the Human Resources Development Institute, we forged
9 a program that would bring labor closely into the Job
10 Training Partnership Act, which is a federal law. And
11 California spends the money for that, those federal monies,
12 under the Job Training Coordinating Council. Ms. Marshall
13 was the Executive Director of that Council.

14 During August of 1987, we reviewed the program with
15 staff people of EDD, Employment Development Department, and
16 the State Job Training Coordinating Council. There was
17 nothing quick or untouched in our approach to the vitality of
18 the program. We submitted it in February, as I noticed. In
19 August, we had the approval of the staff members of those two
20 State agencies, saying this is a reasonable program.

21 But we encountered the continuing hostility of
22 Ms. Marshall. Finally, the judgment was made on November the
23 12th, 1987, by the Operations and Oversight Committee of the
24 Coordinating Council. We had no voice really on this
25 organization that was supposed to train workers in
26 California. We had one member on the Council and one member
27 on the Oversight Committee, the same person. He happened to
28

1 be the President of the State Federation named Mr. Al Gruhn.

2 By a vote of four to one, we were dismissed. The
3 program was rejected after months of study. And the purpose
4 of the program was to enable the Job Training system to make
5 more effective use of labor's resources in developing plans
6 and programs to meet skills shortages and addressing the
7 needs of the dislocated workers as required by the national
8 act. And specifically, the program would provide technical
9 support and training to labor representatives under 51
10 private industry councils in California. The PICs, as
11 they're called, are comprised of labor and management. They
12 require -- we found that business was dominating them all
13 throughout the state. We wanted an adequate training program
14 so that workers' representatives would know the fullness of
15 the law and potential of it for the benefit of workers.

16 It was intended to develop an orderly system of
17 labor consultation and comment, and development of local
18 programs in the state's various service delivery areas, and
19 assist labor organizations in better utilizing the whole
20 program. We wanted to be in it, and we were not in it.

21 Now, some would say, well, what do you expect? The
22 Governor named the members of the Council, and you people are
23 on the outside, but we didn't look at it that way. We looked
24 at it in terms of who was running the exact program, and we
25 got nothing but hostility.

26 But we weren't going to take it lying down. And
27 since federal money was involved, we thought there should be
28

1 a Congressional look at the operation. So, on December the
2 4th, following the rejection on November the 12th, we wrote
3 to the senior Senator from California, Senator Cranston. We
4 reviewed what had occurred and noted that despite out total
5 cooperation in processing the proposal, and the national body
6 sent three counselors out to work with us, spent long nights
7 perfecting the submission, funding was denied. We said that
8 the State Job Training Coordinating Council demonstrated its
9 anti-labor prejudices, and we noted that the State's role is
10 administering federal funds. And therefore, the Senator
11 should investigate the matter. We said that we'd be happy to
12 cooperate with him.

13 What he did was, he wrote to the Governor. So, we
14 have an exchange of "Dear George" and "Dear Alan" letters.
15 And the Governor, as I can understand, defended his agency.
16 That's the way it goes in any administration.

17 But it didn't solve our problems. We were left
18 out. Left out because there was no sympathy, no
19 understanding, no attempt to understanding labor's role in
20 this massive program.

21 Our program would have represented \$437,000 to get
22 labor truly into the federally sponsored program, which was
23 put into -- in fact, it requires that labor be seriously
24 involved. Labor could not be involved under the
25 administration of Ms. Marshall.

26 The second objection is this. We have not -- we're
27 getting now to the Workers' Comp. Appeal -- we haven't one
28

1 labor member on the Workers' Compensation Appeals Board for
2 the first time in the history. And I can recall through
3 personal experience the previous administrations. Not one,
4 and it's been this way through -- I must say, through the
5 Deukmejian years.

6 It wasn't that way in the administration of Jerry
7 Brown. It wasn't that way in the administration of Ronald
8 Reagan. It wasn't that way in the administration of Pat
9 Brown. It wasn't that way in the administration of Governor
10 Merriam. It wasn't that way in the administration of
11 Governor Earl Warren. It wasn't that way in the
12 administration of Governor Olson. It wasn't that way back,
13 back, back to Governor Merriam to Governor Rolph. You can go
14 through all those administrations over the past 50 years, all
15 the Republican Governors always put representatives --
16 sometimes one, sometimes two -- on the Workers' Compensation
17 Appeals Board. It was called the Industrial Accident
18 Commission. Different names; different titles. That was the
19 appeals board.

20 So, now, when we see the possibility of a chance of
21 getting a change in the administration, we're ask to sit
22 silent while the Governor -- and I can understand his role; I
23 don't challenge his duty to his party -- but we're asked to
24 put three nominees of the Governor on the Board of which we
25 don't have one labor representative.

26 What is going on? And to think that a Democratic
27 Senate would confirm these appointments is beyond
28

1 understanding.

2 CHAIRMAN ROBERTI: Who has asked you to sit silent?

3 MR. HENNING: I'm discussing the possibility, which
4 is not fanciful.

5 At any rate, we looked for a voice. How many more
6 years do we wait to get some labor representatives on there?

7 That's our case.

8 CHAIRMAN ROBERTI: Is there anyone else in
9 opposition?

10 MR. RABINE: Mr. Chairman, Members of the
11 Committee, my name is Merle Rabine. I'm the past President
12 and current Chair of the Legislative Committee of the
13 California Applicants' Attorneys Association. We represent
14 injured workers in Workers' Compensation cases throughout the
15 State of California.

16 It is a general principle of administrative law
17 that interpretations of administrative agencies which have
18 responsibility for a particular body of law are given great
19 weight by appellate courts. The Workers' Compensation
20 Appeals Board is the agency which has that responsibility for
21 interpreting the Workers' Compensation Law.

22 As you know, last year you passed the Margolin-
23 Greene reform act, which was the most significant reform of
24 Workers' Compensation law since 1917.

25 In the next few years, the Workers' Compensation
26 Appeals Board will be interpreting that law, deciding what it
27 means, and those interpretations in the past have been given
28

1 great weight by appellate courts, and will undoubtedly in the
2 future be given great weight by the Courts of Appeal and the
3 Supreme Court.

4 For this reason, appointments to the Appeals Board
5 will have a major impact on the rights of injured workers.

6 Also, as Senator Mello mentioned earlier,
7 Ms. Marshall has been nominated for a position which now has
8 a six-year term. This means that if she's confirmed, the
9 next Governor will not have an appointment for this position
10 throughout her or his term.

11 We quite agree with Mr. Henning on the record of
12 Governor Deukmejian and the effect of his administration on
13 injured workers. We think that it's been disastrous. And in
14 principle, we don't believe that the Governor should be able
15 to extend his influence that far into the future.

16 Last Monday, Ms. Marshall graciously met with me
17 and two of my colleagues in Los Angeles, and we had a long
18 and useful conversation about these issues. We found her to
19 be bright, articulate, and candid. And she told us that she
20 has -- prior to her appointment to the Appeals Board, she had
21 no prior knowledge of Workers' Compensation law, she had no
22 prior experience in representing either injured workers or
23 employers or insurance companies in Workers' Compensation
24 cases, and she had no previous judicial experience.

25 Since starting to serve on the Appeals Board, she
26 has only participated so far in a handful of decisions.
27 Therefore, there's no evidence at this time as to whether she
28

1 has the judicial temperament and ability required by the
2 statute of Commissioners of the Workers' Compensation Appeals
3 Board.

4 She may well have those -- that temperament and
5 ability, but there's no evidence of that as of today.

6 For that reason, we urge the Committee to defer
7 confirmation of Ms. Marshall and not to confirm her at the
8 present time.

9 If the confirmation is -- she can be confirmed any
10 time before next April. By that time, she will have
11 participated in many decisions, and we will be able to, and
12 the Committee will be able to analyze the evidence and
13 determine whether she's qualified. And if the new Governor
14 wishes to confirm her appointment, and she is qualified, then
15 this Committee and the Senate will confirm her, I'm sure.

16 But for the present time, we urge you not to
17 confirm.

18 CHAIRMAN ROBERTI: Thank you very much, Mr. Rabine.
19 Is there anybody else who wishes to testify on this
20 confirmation?

21 Then, Ms. Marshall, why don't you conclude.

22 MS. MARSHALL: Thank you.

23 The requirements for appointment to the Workers'
24 Compensation Board do not specifically in the legislation
25 mention a need to have specific background in that area.

26 I do believe my legal training and work in the
27 criminal field has allowed me to have many exposures and many
28

1 opportunities that have been able to translate what is now a
2 new subject matter.

3 And one thing I can assure you of, as Senator
4 Greene said, that I am a quick learner. I have participated
5 in decisions already since June, and there are, I'm sure,
6 some of those available if anyone would want to check on
7 those to see if I have a particular bias or not.

8 All I can do is assure you at this point that I
9 would be as fair and impartial as I possibly could in this
10 job and do the very best job I could.

11 CHAIRMAN ROBERTI: Thank you very much,
12 Ms. Marshall.

13 Why don't we put this confirmation over until next
14 week and reconsider it at that point. Is there any
15 objection?

16 SENATOR PETRIS: When was she appointed?

17 MS. MICHEL: We have until June of next year.

18 SENATOR PETRIS: Let's put it over until December.

19 CHAIRMAN ROBERTI: I would suggest we put it over
20 until next week so we can look at the whole picture, one day
21 at a time, one week at a time.

22 If there's no objection, such will be the order.

23 MS. MARSHALL: Thank you.

24 CHAIRMAN ROBERTI: Thank you very much,
25 Ms. Marshall.

26 Why don't we break for five minutes.

27 [Thereupon a brief recess was taken.]
28

1 CHAIRMAN ROBERTI: The next is Richard P. Winder,
2 Member of the Teachers' Retirement Board.

3 Mr. Winder, we'll ask you what we ask all the
4 Governor's Appointees, and that is why you feel you're
5 qualified to assume this position.

6 MR. WINDER: Thank you, Mr. Chairman, Board
7 Members.

8 I spent 35 years in the insurance and real estate
9 investment banking business, having served with several very
10 large corporations in this country. Spent six years with
11 American Express, a division of American Express in real
12 estate investment banking, of which about 60 percent of my
13 work was done in the pension field; 29 years in the insurance
14 business.

15 I am currently with John Hancock Mutual Life
16 Insurance Company.

17 It is my understanding that I would represent the
18 insurance industry on this particular Board.

19 I've had tremendous experience in retirement
20 planning. I was even -- with two other associates, formed an
21 insurance company which is still in effect today, doing
22 extremely well in the area of mortgage guarantee insurance.

23 So, I think the background that I have had for more
24 than a third of a century would be hopefully very beneficial
25 to the California State Teachers' Retirement System.

26 CHAIRMAN ROBERTI: Thank you very much.

27 Are there any questions of Mr. Winder? Let me see
28

1 if I have any questions.

2 SENATOR CRAVEN: Where is John Hancock
3 headquartered?

4 MR. WINDER: Boston, Massachusetts.

5 SENATOR CRAVEN: I just couldn't remember. I know
6 Penn Mutual is in Philadelphia. I thought maybe they were in
7 Hartford.

8 CHAIRMAN ROBERTI: Ruth De Prida supports you.
9 She's my constituent and friend, so that helps quite a bit.

10 Is there any opposition in the audience?

11 SENATOR CRAVEN: Move the confirmation.

12 CHAIRMAN ROBERTI: Senator Craven moves the
13 confirmation of Mr. Winder to the Floor.

14 Secretary will call the roll.

15 SECRETARY KENDRICK: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY KENDRICK: Senator Mello. Senator
18 Petris. Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY KENDRICK: Senator Roberti.

21 CHAIRMAN ROBERTI: Aye.

22 The vote is three to zero; confirmation is
23 recommended to the Floor.

24 MR. WINDER: Thank you very much, Mr. Chairman.

25 CHAIRMAN ROBERTI: Mr. Margosian, I think we're
26 going to put your confirmation until next week. I hate to do
27 this to you, but you're on a controversial Board, and that's
28

1 all I can tell you.

2 So, we look forward to seeing you next week. Stay
3 in touch with Ms. Michel. It's probably going to be
4 Wednesday, but since that's our last week, it conceivably
5 could be another day.

6 [Thereupon this portion of the
7 Senate Rules Committee hearing
8 was terminated at approximately
9 5:00 P.M.]

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ABEL S. ARMAS, Member
Youthful Offender Parole Board

FRANK NAVA, Chairperson
Hispanic Law Enforcement Task Force

SENATOR QUENTIN KOPP

ARTHUR J. COSTAMANGA, Commissioner
Workers' Compensation Appeals Board

ALBERT G. BOARDMAN, Former Commissioner
Workmen's Compensation Appeals Board

RUSSELL J. GUMINA, Executive Director
Salesian Boys' Club of San Francisco

JOE MARKEY, Legislative Advocate
California Self-Insurers Association

WILLIAM WARD, Legislative Advocate
State Building Trades Council

JACK HENNING, Legislative Advocate
California Labor Federation, AFL-CIO

APPEARANCES (CONTINUED)

1 MERLE RABIN, Chair
2 Legislative Committee
3 California Applicants' Attorneys Association

4 MERVIN GLOW, Former Commissioner
5 Workers' Compensation Appeals Board

6 JIM QUILLIN, Legislative Advocate
7 California Conference of Machinists

8 JACOB MARGOSIAN, Commissioner
9 Workers' Compensation Appeals Board
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN ROBERTI: We will go to Abel S. Armas,
Member of the Youthful Offender Parole Board.

MR. ARMAS: Good afternoon.

CHAIRMAN ROBERTI: Mr. Armas, we did have a hearing
last week, and there were some concerns about your handling of
youthful offenders as regarding their ability to have
rehabilitation, and there were some concerns expressed from
Hispanic organizations, the Hispanic Law Enforcement Task Force
opposed your reappointment.

Maybe what we should do is take opposition and give
you a chance to respond.

Who is here in opposition? Please identify yourself.

MR. NAVA: Mr. Chairman, Committee Members, my name
is Frank Nava. I represent the Hispanic Law Enforcement Task
Force.

Let me preface by saying that the Hispanic Law
Enforcement Task Force is indeed in opposition of Mr. Armas.
The Task Force is a coalition of numerous state and in some
cases national organizations which include: the Latino Peace
Officers Association; the Mexican-American Correctional
Association; the Chicano Correctional Workers Association; La
Ley, which is a peace officers' association basically housed in
the L.A. area; the League of United Latin American Citizens; the
Mexican-American Political Association; La Raza Lawyers
Association; the Mexican-American Legal Defense and Education

1 Fund; and CAFE de California.

2 It's important to recognize that the the Law
3 Enforcement Task Force is an advocate group with its primary
4 goal to increase the representation of Hispanics within the
5 criminal justice system, particularly in the law enforcement
6 profession, and indeed, this includes professionals who are
7 knowledgeable and sensitive to the impact the criminal justice
8 system has on the citizens it protects and those under its care.

9 Also keep in mind that the Task Force was initially
10 formulated five, six years ago because of the need of the
11 various organizations, particularly the Chicano Correctional
12 Workers Association and the Mexican-American Correctional
13 Association and the Latino Peace Officers Association, to see
14 an increase in representation within the ranks of criminal
15 justice professionals.

16 Subsequently, we have worked very, very closely with
17 the directors of the Youth Authorities over the years, the
18 Director of the Department of Corrections, the Commissioner of
19 the Highway Patrol, and certain counties such as the Chief
20 Probation Officer in Los Angeles in an effort to increase our
21 representation and, in some cases, even look at some of the
22 policies that better serve the Hispanic community, particularly
23 the offender.

24 Indeed, I think it's also critical to note, I think,
25 at this time that the -- I, here, as the Task Force
26 representative or Chairperson of the Task Force, I'm very, very
27 troubled to have to be here and opposed Mr. Armas, a fellow
28

1 Latino under the circumstances. Not a very pleasant thing to
2 do; the first time that we have had to do this in the history of
3 the Task Force.

4 The Task Force believes -- and also, let me add
5 another reason why the Task Force was formed years ago was
6 because of the need to acknowledge anonymity, to acknowledge
7 confidentiality, and to assure that retaliation against
8 employees or people within the system is not taken. As such,
9 myself being that of the system, in essence, although peace
10 officer I am, but not with the Department of Corrections or the
11 Youth Authority or the Highway Patrol, or with any specific
12 probation department. I am the one that is charged, in essence,
13 to represent the various organizations.

14 The Task Force believes that Mr. Armas has failed
15 indeed to show the Hispanic community, specifically those
16 charged with providing treatment services to the youthful
17 offenders, that his decisions on the Board as a Board member
18 have been supportive of our community. This is very critical to
19 us, given that the primary role of the Department of the Youth
20 Authority is indeed the treatment and rehabilitation of the
21 wards, to assure that they indeed are ready, if I may, to return
22 to the community as functioning members of our community.

23 The Task Force's opposition is specifically based on
24 Mr. Armas' lack of support for the rehabilitation process of
25 youthful offenders, as demonstrated by the many decisions made
26 by Mr. Armas during his tenure on the Board over the last four
27 years, which again, makes it somewhat unique for us to be here,
28

1 in that typically we do not wait until a person has been in
2 office for a period of time before we have to come before you.
3 In this case, the opportunity has arisen in essence because of
4 numerous complaints that we have received.

5 A major concern is Mr. Armas' insensitivity to the
6 minority ward, particularly the Hispanic ward. Mr. Armas has
7 failed to practice procedures recommended by treatment staff
8 which assure a ward's maximum opportunity for a fair hearing.
9 Records indicate that Mr. Armas has failed to understand the
10 special treatment needs of the monolingual ward and the federal
11 amnesty laws which protect the status of those monolingual wards
12 going through the immigration process.

13 SENATOR CRAVEN: By monolingual, do you mean they
14 speak only Spanish?

15 MR. NAVA: In this particular case, yes. It's
16 typically monolingual Hispanics, although the Youth Authority
17 does have those that are Asian as well.

18 SENATOR CRAVEN: In other words, they speak anything
19 but English.

20 MR. NAVA: Exactly.

21 Now that you have brought up that situation, there
22 are -- that particular question, we are specifically concerned
23 that the procedures allow for a monolingual ward to bring a
24 friendly witness, if I may, to a hearing, or even to request to
25 request a translator. On numerous occasions, indeed, Mr. Armas
26 has refused that opportunity, which in our opinion not only
27 keeps a fair process from taking place, but also just as
28

1 critical, I think, it sends a message to the community, and it
2 also sends a message to other wards, that perhaps the system is
3 not there to assist them, rehabilitate, or give their own
4 perspective as to the status of their rehabilitation.

5 Also, I'd like to add a couple of examples in which
6 the recommendations by staff to provide time reductions have
7 indeed been on record rejected by Mr. Armas without full
8 consideration of the staff or the parole -- institutional
9 staff's treatment plans, if I may. In some cases, often, these
10 cases being referred to the full Board or another Board
11 consisting of three members. In many of these cases, the full
12 Board has immediately recognized the progress and granted time
13 reductions, for example.

14 I'd like to bring you one case particularly in mind
15 that has been really disturbing to us in the case of a Native
16 American, actually, in which the record indicates that the ward
17 had made substantial rehabilitative progress, and had even
18 obtained an Associate Arts Degree in the institution, with no
19 negative behavior documented. In other words, no major Level B
20 documentations.

21 Staff recommended that -- the staff recommendations
22 were indeed denied in terms of the referral to parole.
23 Mr. Armas ordered an additional six months of time for
24 treatment, if I may, and the ward was transferred to a Youth
25 Authority facility housing older and more criminally oriented or
26 sophisticated wards. Granted, this particular ward, indeed,
27 might have been at a lower and less serious institution for a
28

1 period of five years, but he had indeed substantiated his
2 readiness to go out into the community.

3 I'd like to bring your attention to a couple of more
4 incidents in where documentation from, in this particular case,
5 of an INS officer was presented as proof of the screening that
6 often takes place, and is required, and that no INS -- meaning
7 the Naturalization Service -- holds were being placed on the
8 individual. Mr. Armas was given copies of a memo regarding the
9 rules and laws of confidentiality of the amnesty information.

10 In spite of the memorandum, this ward was ordered
11 released to INS, and if declined, for him to be returned to the
12 Board with relevant information. The INS refused to pick up the
13 ward because there was no need, number one, and of course -- for
14 deportation, and the ward was returned back to the institution.

15 What is critical here, I believe, is a lack of
16 understanding of the federal amnesty rules and procedures, and
17 maybe the lack of being able to be sensitive to the fact that we
18 have in our institutions professional staff who work very
19 closely with our folks, or any ward as for that matter, and
20 Mr. Armas has indeed has selected in some cases, or elected not
21 to take those recommended areas -- recommendations into
22 consideration.

23 The record also indicates in many cases his fellow
24 panel member will disagree, and ultimately, through negotiations
25 and discussions back and forth, they may indeed reduce the time,
26 but I'd like to remind the Committee, if I may, that the role of
27 the panel is not to be, indeed, play the good guy/bad guy role
28

1 and to see how we can negotiate time reduction, but indeed to
2 look at the progress of the ward, to look at how can we best
3 serve the individual, and is he or not indeed ready or not ready
4 to return back to society. Not that the Board should indeed
5 follow each recommendation of the staff; however, we believe
6 that those recommendations ought to carry a lot stronger weight
7 than what we have seen Mr. Armas apply.

8 CHAIRMAN ROBERTI: Senator Craven.

9 SENATOR CRAVEN: Mr. Nava, your documentation and
10 your comments have been very, very good.

11 I do find myself somewhat confused. First of all, I
12 want to ask you, how many persons serve on the Youthful Offender
13 Parole Board in number? How big is the Board?

14 MR. NAVA: The Board itself, the full Board is about
15 three individuals. As a panel member, I guess, if I use the
16 word lowers to two individuals.

17 SENATOR CRAVEN: You made mention that Mr. Armas did
18 something as if he were the prime mover in the particular
19 instance to which you have referred.

20 Is he but one vote of three, or is he the person who
21 makes the final judgment without any input from anybody else?

22 MR. NAVA: Indeed, he is one vote of two in those
23 cases we have looked at. And also, the records also indicate
24 that in a large number, a good majority of those cases, there is
25 that dialogue back and forth between the two panel members that
26 result, rather than in a 60-day time reduction, to a compromise
27 of 30 days, et cetera.
28

1 SENATOR CRAVEN: So, if the two persons serving on
2 the panel, if they disagree, one with another, that has a
3 tendency of, in effect, deadlocking and meaning no action is
4 taken.

5 MR. NAVA: Action is also often referred on to the
6 Board, to the full Board.

7 SENATOR CRAVEN: Then it's bucked up to the next
8 higher level. So then, three people sit in judgment?

9 MR. NAVA: Yes, sir.

10 SENATOR CRAVEN: Of those three people, two of them
11 have been the original hearers of the situation?

12 MR. NAVA: I don't know, except that in the majority
13 of the cases that were reviewed, those people -- in many, the
14 majority of the cases -- did grant the recommendations by the
15 staff.

16 SENATOR CRAVEN: I get the impression at the outset
17 when you went through the litany of Hispanic organizations, the
18 one thing they shared in common, as far as I recall, was the
19 fact that they were Hispanics. I mean, they were in various
20 areas of the government, but they all were Hispanics; were they
21 not?

22 MR. NAVA: Typically they're all Hispanics, correct.

23 SENATOR CRAVEN: There seemed to be a certain
24 insinuation, if not a definite statement, to the effect that he
25 showed some disregard for those people in a nationalistic sense.

26 And I have a little bit of trouble understanding
27 that, because although I don't know for sure, I'm presuming
28

1 Mr. Armas is a Hispanic himself; is that correct, sir?

2 MR. ARMAS: That is correct, sir.

3 SENATOR CRAVEN: And if that be the case, I would
4 find that to be somewhat unusual that he would not have the
5 normal compassion for his own fellow men or women, as the case
6 may be.

7 MR. NAVA: That's a good point, sir.

8 Unusual yes, because of the role that Mr. Armas
9 plays, the role that he's been called upon to play.

10 Not necessarily unusual, because certainly he is
11 entitled to his positions about, if I could use the expression
12 that he's used, wetbacks.

13 CHAIRMAN ROBERTI: Have you used that term?

14 MR. ARMAS: No, sir, never.

15 MR. NAVA: Illegal wetbacks, for example, has been
16 referred here.

17 Unusual, yes, in the sense that in the position that
18 Mr. Armas plays, in the role that he has played, he certainly is
19 in a role to show an objective -- play an objective -- make
20 objective decisions on the priorities of our youth.

21 Not necessarily unusual in the sense that he is
22 entitled to his own opinions, and I can assure you, as in the
23 case of whites, as in the case of blacks, in the case of any
24 group, there are many of us feel that indeed illegals do not
25 belong or to be here, and neither should we give them any of the
26 treatments that we would give any of our regular citizens.

27 I'm not sure that that is a role or a mentality that
28

1 we would like to see on this important position.

2 SENATOR CRAVEN: It impresses me that you and those
3 that you represent are, in fact, professional staff people.

4 MR. NAVA: Yes, sir.

5 SENATOR CRAVEN: And professional staff is trained to
6 follow a certain line, which is hopefully the epitome of
7 professionalism.

8 And as a person who has served in a staff capacity,
9 serving in this case council people, I had certain training
10 which hopefully had qualified me to do what I did, and yet,
11 quite frequently, a lot of those people did not agree with me at
12 all. They did not have as much grounding in it as myself.

13 So, I don't find it particularly unusual that members
14 of a Board may have a tendency to disagree with the
15 professionals.

16 MR. NAVA: I agree, sir.

17 And also, I would not find it unusual that the
18 members of a board or a body like this would necessarily
19 disagree with certain recommendations of the staff.

20 I do find it unusual, or I do find it -- we find it
21 unacceptable in any profession or in any situations where you
22 have recommendations that favor certain decisions, and an
23 individual will blatantly not listen and perhaps ignore
24 procedural processes. That's the only -- the thing that I would
25 find unacceptable in any kind of a capacity.

26 SENATOR CRAVEN: Let me try to wind it up by just
27 asking you this: in your own professional judgment, do you feel
28

1 that Mr. Armas in any instance took an action to the detriment
2 of the ward?

3 MR. NAVA: Yes, sir.

4 SENATOR CRAVEN: You do?

5 MR. NAVA: I do, sir.

6 I do in some cases where the ward was -- particularly
7 in the case of the Native American ward, Hispanic Native
8 American, where he was sent to a much more -- an institution
9 where there were more criminally oriented individuals.

10 SENATOR CRAVEN: Yes, that's what you detailed
11 before.

12 MR. NAVA: Another one, in the case of a black ward
13 who earned his way to becoming recognized as perhaps a top
14 member of his crew, okay? And now, though, Mr. Armas on record
15 stated that the ward made excellent progress and obtained his
16 goals in treatment. He also commented that the ward is alert,
17 intelligent and a high achiever, but egocentric and
18 manipulative. His co-Board member pointed out the ward's
19 progress and acknowledged it. Staff recommendation, again, was
20 denied, and he was granted a time -- a 30-day time reduction
21 rather than the full 90-day time reduction that was requested.

22 This is significant in that other wards view what is
23 going on. They use this as a model for an individual to be 17,
24 to be the lead in his crew, okay? It's a significant
25 accomplishment.

26 SENATOR CRAVEN: You know, Mr. Nava, it occurs to me
27 that Mr. Armas is, in fact, a professional himself. He is a
28

1 police captain, is he not, with one of America's and perhaps one
2 of the world's largest departments. He's also a degreed person
3 in the police science field. And he is a person who works on a
4 little different side of the individual than you and your
5 colleagues do. They are kind of running rampant, and he has to
6 deal with them out in the field. They are in a sort of a
7 sequestered situation when you and your fellow professionals
8 deal with them.

9 Don't you think that that may have a tendency to, if
10 I may use the term, color this thinking a little bit? Do you
11 understand what I'm saying?

12 MR. NAVA: Indeed I do, sir.

13 I, too, am a peace officer. We've had other Board
14 members who have been from the ranks of the peace officer who
15 recognize that.

16 But I'm not sure that, and I do not accept, that the
17 role that a Board member plays can afford to be colored to the
18 degree that his color leads to adverse actions or adverse
19 impacts on the wards that we're trying to serve.

20 SENATOR CRAVEN: But you would probably also agree
21 that your comment as to the adversity of something is your
22 opinion as opposed standard norm.

23 MR. NAVA: The opinion of the Task Force, yes, sir.

24 SENATOR CRAVEN: So there may be some little bit of
25 color in what you think.

26 MR. NAVA: Indeed, I certainly favor rehabilitation
27 as opposed to lock them up and throw away the key. And I think
28

1 that's the main thing of the Youth Authority.

2 SENATOR CRAVEN: I used the term, and perhaps I did
3 so unadvisedly, but you have a tendency to look at things based
4 on your experience. He has a tendency to look at it based on
5 his. Hopefully, you know, we don't want to get to "never shall
6 the twain meet" situation:

7 MR. NAVA: Sure, I understand.

8 SENATOR CRAVEN: I just wanted to try to draw you out
9 on some of it, and I appreciate your answers very much.

10 CHAIRMAN ROBERTI: Do you have a feeling that
11 Mr. Armas' decisions are affected by the ethnicity of the
12 person, of the youthful offender? Or, is it that he is just
13 universally more stringent than the others?

14 MR. NAVA: I think that we at times -- you know,
15 frankly I think he's universally, okay, basically does not
16 appreciate the rehabilitative process, okay?

17 Let me also add that I know t.v. mechanics, and all
18 the repairmen that say the last thing they fix is their own car;
19 they tend to be critical of their own -- their own employees.
20 We tend to sometimes be critical of our own family, and I don't
21 think it's unusual for us, perhaps, in the effort to try to see
22 good, a good effect, for us to be perhaps overly critical of our
23 own people to the point that it's colored; all right?

24 Again, I think of folks in this role, whether they be
25 white, whether they be black, whether they be brown or Asian,
26 need to look at it as objectively as possible, and that gives
27 us, as minorities, I think, even us much more difficult row to
28

1 hoe when we're dealing with our own people, if I may.

2 CHAIRMAN ROBERTI: Please continue. We have to keep
3 moving.

4 MR. NAVA: I understand.

5 In summary, I want to add that various organizations
6 or members of these correctional organizations, including the
7 Latino Peace Officers Association, are not here only because of
8 travel. As you know, this is a voluntary organization located
9 throughout the state, okay, and members come, the residents
10 come, from various parts, most of which are in Los Angeles,
11 number one.

12 Number two, many of them would not participate in the
13 sense because of fear of retaliation, okay. This is why I'm
14 here.

15 And number three, although we find this a very
16 difficult -- difficult comments have been said, some very
17 serious comments have been said regarding Mr. Armas, okay we do
18 not apologize for that, except that we recognize the role of the
19 parole -- of the Board member is indeed a very critical one.
20 And we need sensitive, sensitive people on those -- in those
21 positions, sensitive to the needs of the -- particularly the
22 needs of the Hispanic youth as well as all youth going through
23 the rehabilitative process.

24 And without being facetious at all, okay, we would
25 much rather have a sensitive white person or black person, okay,
26 than indeed an insensitive Hispanic or an insensitive any other
27 person, if I may.
28

1 Thank you for the opportunity.

2 CHAIRMAN ROBERTI: Thank you very much.

3 Mr. Armas, do you want to respond?

4 MR. ARMAS: Just briefly, Mr. Chairman, thank you.

5 My father was born in Uruapan, Michoacan; my mother
6 is from the Territory of New Mexico. I'm a first generation
7 American.

8 And I'm also proud to say that I am a member in good
9 standing, have been for ten years, in the Latino Peace Officers
10 Association, L.A. Chapter. I'm also one of the founding fathers
11 of La Ley, the Latin American law enforcement association in Los
12 Angeles.

13 I must say, however, that I do have difficulty
14 occasionally telling, convincing, some of my Hispanic friends
15 and associates that I'm duty-bound to do my job without regard
16 to race, color, creed, or national origin. And most people that
17 are truly understanding support that position.

18 I'm very much aware of the need for a rehabilitation
19 process, but I know by a first-hand experience that with the
20 many emotionally unstable, disturbed, serious criminal offenses
21 committed by our youth, that the rehabilitation process is a
22 long, long one. It takes very long, for example, to treat a sex
23 offender, or a drug user, a person who takes another's life.

24 I do have a concern with monolingual wards, or young
25 people that come to the country without any kind of supervision,
26 and who we have no one to release to after they have completed
27 their particular time in the rehabilitative process. And one of
28

1 the conditions of parole that we impose is that they shall be
2 either in school or actively employed. And recognizing the need
3 for Social Security numbers, we refer them, I refer them, to the
4 Department of Immigration so that if they're eligible for
5 amnesty proceedings, they can be granted amnesty status, and if
6 they're not, so that they will be processed according to the
7 federal law, which may or may not result in their deportation.

8 As far as the specific case, I do not have all of the
9 facts that Mr. Nava referred to regarding the transfer of this
10 individual. I do keep extensive records myself so that I can
11 refer to my decisions as the need arises, and the only thing
12 that came to mind when he spoke was that I tried to transfer to
13 a more age-appropriate institution. The older wards
14 traditionally or uniformly are channeled by us to the Youth
15 Training School in Southern California or to the Preston School
16 of Industry up here in Northern California.

17 Finally, we do have seven Board members on the
18 Youthful Offender Parole Board, and none of our decisions, with
19 exception of the referee cases which are very minor cases, are
20 made by any one of us. We sit as panel boards, and when we
21 cannot agree, we refer to full Board panels, which are three
22 members, or up to the full Board en banc, which is all seven of
23 meeting together as we do once a month to make the really
24 difficult necessary decisions that the job calls for.

25 Thank you very much for the opportunity to respond.

26 CHAIRMAN ROBERTI: I have a chart here, Mr. Armas.
27 Frankly, it's a little bit difficult for me, as a layman, to
28

1 understand; however, it indicates that your decisions deviate
2 from the PCD -- I take it that's the Parole Consideration Date
3 -- guidelines. In 1989, you were between 15 and 16 percent more
4 stringent; all the others were under the guideline. And then,
5 in the first half of this year, you were 37.3 percent off the
6 guideline.

7 I understand that the guidelines -- which was the
8 highest of all the Board members. I understand that the
9 guidelines are set by statute?

10 MS. MICHEL: The Board sets the guidelines pursuant
11 to agreement with the Legislature.

12 CHAIRMAN ROBERTI: How does that work?

13 MR. ARMAS: My understanding is that we prepare
14 guidelines by category of criminal offense and refer them to the
15 Legislature to approval, which was done 1986, as I recall.

16 CHAIRMAN ROBERTI: That's when the last set of
17 guidelines was approved?

18 MR. ARMAS: Yes, sir.

19 MS. MICHEL: That would have been what triggered
20 Mr. Vasconcellos' letter to you, if you will recall the letter
21 that you have from Mr. Vasconcellos about the guidelines.

22 MR. ARMAS: I might say, sir, for your information,
23 if you're not already aware, that our guidelines are the base
24 term for an offense. We have parameters set for us by the
25 Juvenile and Superior Courts through either age 21 or 25.

26 So, our guidelines are a starting place, and
27 depending on the type of crime, and from that we deviate by six
28

1 months, one way or the other, depending on the circumstances of
2 the particular crime.

3 CHAIRMAN ROBERTI: So, the universal deviation is six
4 months?

5 MR. ARMAS: That's what the guideline maximizes.

6 CHAIRMAN ROBERTI: You never --

7 MR. ARMAS: Not ever without going to the full Board
8 en banc in extremely heinous type -- maybe murder or a double
9 murder, something like that.

10 CHAIRMAN ROBERTI: How often does that happen?

11 MR. ARMAS: Well, unfortunately, it happens quite
12 often. That's another reason that I might offer.

13 If I appear -- I don't know what document you're
14 referring to there exactly. I'm in the Southern California
15 area. And for whatever reason, the more serious, more violent
16 type of offender comes from that area. And I'm usually involved
17 in the two or three member panel that hears the cases.

18 CHAIRMAN ROBERTI: So, the panel you hear the cases
19 on is geographically based?

20 MR. ARMAS: At the time we have been because of
21 budget constraints that limit our travel throughout the state,
22 yes, sir.

23 CHAIRMAN ROBERTI: So, there may be a problem with
24 this. This chart could be geographically skewed, you're saying?

25 MR. ARMAS: Yes, sir. And it also, as I view it now
26 -- thank you for the copy here -- it figures we would have to go
27 into, you know, case by case to give me an opportunity to
28

1 answer.

2 CHAIRMAN ROBERTI: Is there any other opposition in
3 the audience?

4 Do I hear a motion or comment? Senator Mello.

5 SENATOR MELLO: Mr. Chairman, before we have a
6 motion, I was very interested in that chart as well. He has a
7 copy of it now.

8 It does show Armas as being as high as 37 percent out
9 of the guidelines that were adopted there. I think it coincides
10 with what you said earlier. You said these youthful offenders
11 that have drug problems, and have all these other things that
12 we're aware of, take a long, long time, you know, to
13 rehabilitation.

14 Now, the thought that comes to my mind, how well is
15 your long, long, long time of incarceration for the youthful
16 offender working? What's the success rate of rehabilitation
17 when you don't opt for the kind of alternatives that would help
18 to provide the rehabilitation?

19 MR. ARMAS: No, sir, we do. That's my point.

20 The rehabilitation, you know, that I look for is what
21 is presented to us from the psychologist within the institutions
22 and/or the psychiatrist, or by the counselors in the specialized
23 sex offender programs, or the specialized drug treatment
24 programs. They have to complete those programs in order to be,
25 quote, "rehabilitated", and to be a good risk on parole status.

26 SENATOR MELLO: But I mean, I sense your attitude and
27 philosophy.
28

1 What I think, our jails and juvenile institutions are
2 just bulging with inmates, and the recidivism rate is 70
3 percent. A lot of our people coming back to the adult prisons
4 are probation offenders, and I don't know very many youthful
5 offenders that are coming out better than what they went in.
6 Most of them come out firmer into a more criminal attitude.

7 MR. ARMAS: No, sir. I would respectfully disagree
8 with you.

9 Many of the programs, and many of the young offenders
10 do come out, you know, changed, grown, you know, and useful and
11 productive, you know, with the change in the attitude.

12 SENATOR MELLO: The point is, I've made surveys
13 myself because I'm concerned about people who end up in prison.
14 Some of it you just can't help. They're habitual type of
15 criminals.

16 But what I've seen happen is, in doing some
17 assessments, number one, in county institutions and even in
18 youthful, over half do not have a high school education.

19 MR. ARMAS: That's true.

20 SENATOR MELLO: So it tells me that those who've gone
21 to high school, those who have gone to college, have a better
22 chance of staying out of prison, and have a better chance of
23 becoming taxpayers, like all of us.

24 So I think, you know, we're paying 30,000 a year to
25 keep people locked up. Assessment has to be made on the chances
26 for them being rehabilitated. Make an investment in the
27 alternative so we can steer them in the right direction rather
28

1 than warehousing them for the rest of their lives.

2 MR. ARMAS: I agree with you.

3 SENATOR MELLO: You might agree with me, but
4 statistics sure don't prove, at least your point, as I read the
5 chart.

6 This information, I questioned our consultant,
7 Ms. Michel here, about where did these figures come from. She
8 says they came from the Board, the Youthful Offender Board, as I
9 understand it, so these are your own figures.

10 Another point I want to make, Mr. Chairman, and that
11 is, what is really strange in this case is, the United States,
12 thank goodness, is made up of many, many cultures and
13 nationalities and ethnic groups. And you look around, I'll
14 start with the Governor of California who's Armenian, and he's
15 very proud of it. And we here in the Rules Committee see a lot
16 of people from Armenian extraction being appointed because he
17 believes strongly in his own people, and they believe strongly
18 in him. And I don't knock it; I think he's very proud of being
19 Armenian.

20 My colleague, Senator Petris, he's very proud of
21 being Greek, and he's fully supported, to my knowledge, by the
22 Greek community.

23 Senator Roberti, Italian. I think I have a few
24 friends in the Portuguese community.

25 Assemblywoman Maxine Waters, who represents Watts, is
26 really held in the highest esteem by the black community and
27 others as well.

28

1 But in your case, a lot of your opposition comes from
2 the Mexican-American community, even though you claim -- and
3 you're right; your father was born in Michoacan and your mother
4 in the Territory of New Mexico. It's really strange when
5 somebody -- and going back to my first statement about we are
6 made up of ethnic groups, look at the Asians, look at everybody,
7 they sort of shepherd their own people along and try to be very
8 supportive of trying to help the people along the best they can.
9 In return for that, there should be a lot of Mexican-American
10 people here coming here saying, "We want our person on the Board
11 because he's one of us, and he'll be good to our people." But
12 almost the opposite is happening. And this is really strange.

13 Last week, I read excerpts from four different
14 letters, all raising critical points about your nomination, and
15 four that I read were from Mexican-American organizations.

16 MR. ARMAS: I beg to differ, sir. Only one was.

17 SENATOR MELLO: No, I don't want to re-read them, but
18 you heard them. We have the Mexican-American Correctional
19 Association.

20 CHAIRMAN ROBERTI: We might as well get this out.

21 Do you have the names of the organizations?

22 SENATOR MELLO: The one that does support him is from
23 Miami, Florida. They must know something about you that the
24 local groups that are Mexican-American do not know.

25 Do you have a list of the ones that raised a question
26 about him?

27 MS. MICHEL: National Council on Crime and
28

1 Delinquency, out of San Francisco; the National Center on
2 Institutions and Alternatives; the Mexican-American Correctional
3 Association, their Executive Board. That's what I have listed.

4 SENATOR MELLO: There were some other letters.

5 MS. MICHEL: And the Hispanic Task Force has come in
6 today.

7 CHAIRMAN ROBERTI: How many Hispanic organizations?

8 MS. MICHEL: There's -- how many groups do you
9 represent?

10 MR. NAVA: Nine.

11 CHAIRMAN ROBERTI: I know he represents a number, but
12 how many Hispanic organizations do we have a letter on file?

13 MS. MICHEL: Three other than his.

14 CHAIRMAN ROBERTI: Three other than this one? What
15 are those?

16 MS. MICHEL: The Mexican-American Correctional
17 Association -- I just read them -- the National Council on Crime
18 and Delinquency, National Center on Institutions and
19 Alternatives.

20 CHAIRMAN ROBERTI: Are those Hispanic organizations?

21 MS. MICHEL: I don't know if they are or aren't.

22 MR. ARMAS: They are not Hispanic organizations.

23 CHAIRMAN ROBERTI: For interest, I was wondering
24 which ones are Hispanic organizations here.

25 I know your organization, and the Mexican-American
26 Correctional Association.

27 MS. MICHEL: Right, and the Hispanic Task Force.
28

1 MR. NAVA: The Task Force includes an additional
2 eight organizations.

3 MS. MICHEL: And that's what I have.

4 CHAIRMAN ROBERTI: And the Mexican-American
5 Correctional Association is a member of your organization?

6 MR. NAVA: Yes.

7 May I make one final comment?

8 CHAIRMAN ROBERTI: Please.

9 MR. NAVA: The only final comment I wanted to make is
10 that I really appreciate Mr. Armas' heritage very, very much.
11 He mentioned something very critical that is also reflected in
12 decisions that were made, in that the need to be sensi -- to be
13 aware of where folks come from, and the fact that some of the
14 parolees may need roots to go back to.

15 We are particularly disturbed when he wants to send
16 folks who are illegal, perhaps, or going through the INS
17 process, and return them back for deportation when they have
18 been, in essence, raised here in the United States, raised in
19 the United States, having no family in Mexico, none at all, to
20 follow-up on, number one.

21 Number two, I'm not sure that that is the decision or
22 the role of a panel member or a Board member.

23 CHAIRMAN ROBERTI: I think that may be the crux of
24 some of the -- I hate to use the word "emotional", but I'll say
25 it because it's the first thing that comes -- the emotional
26 opposition to you, and that is the INS deportation; the
27 reference to INS deportation.
28

1 Can you explain what you have done in this area?

2 MR. ARMAS: We approved --

3 CHAIRMAN ROBERTI: Have you ever referred somebody to
4 INS when INS didn't have them on --

5 MR. ARMAS: Didn't have them on --

6 CHAIRMAN ROBERTI: -- record?

7 MR. ARMAS: No, no. That's what I wanted to say.

8 Whenever a person has been here for an extended
9 period of time, we always have back-up plans so that if INS does
10 not express an interest, then they are referred on parole status
11 to their family members or --

12 CHAIRMAN ROBERTI: Mr. Nava seemed to indicate, and
13 maybe I have it wrong, that you have referred people to --

14 MR. NAVA: When treatment plans reflect that the ward
15 does not --

16 CHAIRMAN ROBERTI: Treatment plans?

17 MR. NAVA: Treatment plans and the parole plans refer
18 to INS amnesty situations or procedures, okay, where the INS
19 does not have a hold on the individual, he has oftentimes
20 referred them to INS anyway, okay, to the point that the INS
21 officials have questioned why are they doing this. There's no
22 need for them to be held back here for a hold because there's no
23 need. Either they're going through the amnesty process or it's
24 been completed.

25 CHAIRMAN ROBERTI: You're saying he's referred people
26 to INS --

27 MR. NAVA: Yes.
28

1 CHAIRMAN ROBERTI: -- who are going through the
2 amnesty process?

3 MR. NAVA: Yes, yes. And then, in addition, has
4 requested files and applications to substantiate that, which I
5 understand, indeed, are also confidential documents at this
6 time.

7 CHAIRMAN ROBERTI: Have you ever done that,
8 Mr. Armas?

9 MR. ARMAS: No, sir, no.

10 What -- if a person is in the amnesty process, he is
11 interviewed by the Immigration and Naturalization Service and
12 given an authorization to work and to remain in the United
13 States. No problem.

14 CHAIRMAN ROBERTI: Well, I'm a little bit confused.

15 Speaking for myself, it doesn't bother me too
16 terribly that your record is a little bit more stringent,
17 because people see these difficult cases differently, and I
18 don't feel, for better or for worse, that the case has been
19 established that you treat Hispanics and/or other minorities
20 differently than you seem to treat everybody.

21 However, this INS thing does concern me. I don't see
22 what INS has to do with it, especially when they don't have a
23 hold on somebody. From what I gather, the testimony is
24 conflicting.

25 So, for myself, what I'm going to do, and I'm not
26 saying that anybody follow my guideline on this, is, I'm going
27 to put you over. I'm going to vote to put you over until Friday
28

1 so I can find out what your referral practices are with INS.

2 But maybe other people want to vote for you or vote
3 against you, which is their privilege.

4 That is a serious accusation in my mind, especially
5 when somebody's in the amnesty process.

6 SENATOR MELLO: Mr. Chairman, may I follow your
7 thinking there just briefly.

8 In our area, we do have a high percentage of
9 Hispanics, 40 percent in my district, and a high percentage of
10 those under amnesty, and some undocumented.

11 What happens when they apply for amnesty, it's a
12 transition situation. They're not just given a permit, but
13 they're in transition while their case is being heard. It takes
14 a long time, it takes almost forever, and they have to prove
15 certain things.

16 The thing, also, that I think that this leads to, and
17 I want to ask you another question, have you ever referred to
18 the Immigration and Naturalization Services persons who later
19 were found out to be American citizens, who were born in the
20 United States, a lot of them in Texas and Arizona, who don't
21 speak English?

22 MR. ARMAS: No, I can in good conscience say no. We
23 examine quite extensively.

24 SENATOR MELLO: You see, in my area and other parts
25 of the state, American citizens have been sent to the
26 Immigration Services because they lack the proficiency of
27 speaking English fluently.
28

1 MR. ARMAS: Yes, I know, but your question was, have
2 I referred those type of people, and no, I speak Spanish also.

3 SENATOR MELLO: It has nothing to do with speaking
4 it.

5 The question is the fact that someone appears to be
6 an undocumented citizen is being sent to the Immigration people
7 when in fact they are American citizens.

8 MR. ARMAS: I don't do that, sir. I do not act on
9 appearances. I inquire.

10 SENATOR MELLO: Do you have a way of knowing
11 conclusively that they are citizens of the United States

12 MR. ARMAS: Conclusively, no, to answer it correctly,
13 but I extend the benefit of the doubt if there's any question
14 about it.

15 I'm only talking about those people that I establish
16 are not in the country legally, because they admit that they're
17 here illegally.

18 SENATOR MELLO: Last week you said, though, that you
19 provide the rehabilitation and then you refer them to the
20 Immigration Service.

21 MR. ARMAS: Yes, when there's no one to release them
22 to. There's no family or friend to release them to.

23 SENATOR MELLO: Some don't have families or friends
24 here. They could be here under the amnesty program without any
25 family or friends here, but they have the right. They have a
26 legal status here while they're under transition of amnesty.

27 MR. ARMAS: Yes. If they have applied and it has
28

1 been my finding that if they're in the institution, then
2 Immigration will give them a legal standing, not deportable. We
3 have a form that they fill out, and it says not deportable or
4 hold, or they have this identification card that authorizes them
5 to be employed while their amnesty application is approved.

6 SENATOR MELLO: Or disapproved.

7 Thank you.

8 SENATOR BEVERLY: Mr. Chairman.

9 CHAIRMAN ROBERTI: Yes, Senator Beverly.

10 SENATOR BEVERLY: May I ask Mr. Nava one brief
11 question while he's here.

12 You indicated you're a peace officer?

13 MR. NAVA: Yes, sir.

14 SENATOR BEVERLY: Are you a police officer, or what
15 are you?

16 MR. NAVA: I'm a State -- well, I'm Chief of a State
17 investigator group. I'm Chief of State Food and Drug.

18 SENATOR BEVERLY: Food and Drug.

19 MR. NAVA: Yes, sir.

20 SENATOR BEVERLY: Thank you.

21 CHAIRMAN ROBERTI: Do I hear a motion?

22 SENATOR CRAVEN: Move.

23 CHAIRMAN ROBERTI: Senator Craven moves the
24 appointment of Abel Armas to the Youthful Offender Parole Board.

25 Secretary will call the roll.

26 SECRETARY WEBB: Senator Beverly.

27 SENATOR BEVERLY: Aye.

28

1 SECRETARY WEBB: Senator Mello.

2 SENATOR MELLO: No.

3 SECRETARY WEBB: Senator Petris.

4 SENATOR PETRIS: No.

5 SECRETARY WEBB: Senator Craven.

6 SENATOR CRAVEN: Aye.

7 SECRETARY WEBB: Senator Roberti.

8 CHAIRMAN ROBERTI: The vote is two to two; the motion
9 fails.

10 I would entertain a counter motion that the
11 appointment be put over until Friday for vote only pending a
12 review of -- well, we're going to be here Friday anyway.

13 MS. MICHEL: I'll try, but I can't promise.

14 CHAIRMAN ROBERTI: Well, then, it may have to go
15 until December, but I would like to have the information by
16 Friday.

17 SENATOR PETRIS: So move.

18 CHAIRMAN ROBERTI: Pending a review of the questions
19 that have been raised.

20 Senator Petris moves. It does not mean it's going to
21 be a whole, full-blown hearing, except for the question
22 specifically that we're asking. So, Senator Petris moves.

23 Yes, Senator Craven.

24 SENATOR CRAVEN: Are you going to attempt to
25 investigate the INS portion of this?

26 CHAIRMAN ROBERTI: That specifically, yes.

27 SENATOR CRAVEN: And who are we going to get the
28

1 information from?

2 CHAIRMAN ROBERTI: We can start with INS.

3 MS. MICHEL: Start with the Board. There is
4 documentation at the Board.

5 SENATOR CRAVEN: All right. But you have heard an
6 explanation from Mr. Armas as to what he has done.

7 CHAIRMAN ROBERTI: Yes, I have, but those have to be
8 treated on a case by case basis.

9 Even if there's nobody else to return the person to,
10 the send a person back to Mexico, where they may have no family,
11 may have lived here for a huge length of time, would affect my
12 vote, I think.

13 SENATOR CRAVEN: I understand that. I have no
14 quarrel with that at all.

15 But you have heard him say categorically that he has
16 not done what you feel would be inappropriate.

17 CHAIRMAN ROBERTI: Yes, and I don't want to challenge
18 Mr. Armas' veracity, but it seems like there's a conflict in the
19 testimony.

20 In my mind, it's important enough. It's a very
21 important question.

22 I tend to think Mr. Armas may deviate a little more
23 than necessary from the guidelines, but I don't think that
24 deviation is radicalized. And I don't feel that the case that
25 he has specifically singled any ethnic group has been made, in
26 my mind. We haven't heard enough to that extent.

27 But the business of the INS and treating amnesty
28

1 lightly, that is an important factor to me.

2 SENATOR CRAVEN: Yes.

3 Well, I have no objection, Mr. Chairman.

4 CHAIRMAN ROBERTI: And hopefully we'll find out by
5 Friday. I do not want to delay your appointment unnecessarily
6 if it can be made.

7 SENATOR CRAVEN: This thought comes to mind, and it's
8 just in passing.

9 If the audience here today were ten times as large,
10 and they came from all segments of the population of the State
11 of California, from all of its various areas, I think that they
12 would applaud him for, if you want to use the term, erring on
13 the side that he has. I don't think there's any question about
14 that.

15 CHAIRMAN ROBERTI: Thank you, Senator.

16 SENATOR MELLO: Mr. Chairman, may I suggest, I just
17 don't think you're going to find the answers in a truthful way
18 from the Immigration and Naturalization Service. We've gone
19 through this in hearings in the Salinas area, called them in to
20 testify. They deny categorically that they are mistreating
21 persons, either in transition who were given amnesty; they deny
22 the long delays; they deny they've picked up American citizens
23 and tried to ship them back to Mexico, and so forth.

24 I think where you have to get the information from is
25 some advocate groups who are counseling and helping people with
26 the process of amnesty.

27 CHAIRMAN ROBERTI: You're right, we should do that,
28

1 too.

2 SENATOR MELLO: That, I think, would bring fairness.

3 I don't think you can do it by Friday, but I hope you
4 can. But you're going to hear -- if you want to hear what's
5 happening to our Immigration program, bring the people who are
6 out counseling those who are struggling to come to the nation of
7 the greatest opportunity in the whole world, the United States
8 of America. That's why they're trying to build ditches in
9 Mexico and build walls, because this is where everybody wants to
10 come.

11 SENATOR CRAVEN: If I may, I don't disagree with what
12 Senator Mello has said.

13 Although, I'd simply suggest that you are not going
14 to the source. And the people of the federal government are the
15 people who apply the rules and the regulations.

16 You are going to, in effect, patronize an adversarial
17 group if you concentrate on that area.

18 CHAIRMAN ROBERTI: Senator Petris has a motion that,
19 pending a response to our questions, the appointment be put over
20 until Friday, primarily for a vote only.

21 Secretary will call the roll.

22 SECRETARY WEBB: Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Senator Mello. Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Senator Craven.
27
28

1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 The vote is four to zero; the confirmation's put over
5 until Friday.

6 MR. ARMAS: Thank you very much, gentlemen.

7 [Thereupon the Committee acted
8 upon legislative agenda items.]

9 CHAIRMAN ROBERTI: The next item is Mr. Arthur J.
10 Costamagna, Commissioner, Workers' Compensation Appeals Board.

11 Mr. Costamagna was very gracious in waiting since we
12 didn't think that last one was going to take as long as it did.

13 Senator Kopp.

14 SENATOR KOPP: Thank you very much, Mr. Chairman and
15 Members of the Committee.

16 I'm pleased to present for recommended confirmation
17 Arthur J. Costamagna, who is an attorney whom I've known
18 personally for over 2½ decades. He's a native San Franciscan,
19 as a matter of fact, a fourth generation Californian who, as
20 indicated, now resides in Marin County.

21 I've known him professionally and from a community
22 standpoint. He has not only been active in the affairs of the
23 profession, but also in community organizations, including one
24 of the most notable organizations in San Francisco, the Salesian
25 Boys' Club, and you'll have the opportunity to hear from the
26 present Director of that institution, Mr. Russ Gumina. He's
27 also a past president of the North Beach Lion's Club. He was
28

1 with the Division of Corporations -- well, I guess I'd better
2 not say a long time ago, but back in 1959-1960.

3 He has, of course, been a prior member of this Board.
4 He served for ten years. He served also in other department of
5 State government, including Consumer Affairs and the Department
6 of Commerce. He practiced for three years with the firm of
7 Mullen and Filippi which specialized in Workers' Compensation
8 defense. Frank Filippi is probably one of the most prominent
9 attorneys in that field, former president of the Lawyers' Club
10 of San Francisco, which is basically made up of sole
11 practitioners and the small officer practitioners.

12 He has, the last three years prior to his
13 appointment, or five years, been Vice President and Trial
14 Counsel of the Orion Group in San Francisco, and he is a
15 graduate of the University of San Francisco and the University
16 of San Francisco's Law School, as well as a veteran of service
17 in the United States Army.

18 Mr. Chairman and Members, Art Costamagna's one of the
19 most earnest and, I'd say, self-effacing people that I know in
20 the profession in San Francisco. He's essentially from my
21 generation of San Francisco lawyers, and people who've been
22 active in the community. And I commend him, Mr. Chairman and
23 Members of the Committee, for confirmation.

24 Thank you for your time.

25 CHAIRMAN ROBERTI: Thank you, Senator.

26 Mr. Costamagna, it's a fine recommendation from
27 Senator Kopp.
28

1 We'll ask you what we ask all the Governor's
2 Appointees, and that is what are your qualifications on this
3 board? We understand you served on it during a different
4 administration.

5 MR. COSTAMAGNA: Yes.

6 I have a brief statement, if I may, Senator.

7 CHAIRMAN ROBERTI: Please.

8 MR. COSTAMAGNA: Senator Roberti and Members of the
9 Rules Committee, I was recently appointed to the Workers'
10 Compensation Appeals Board by Governor Deukmejian, for which I
11 am thankful.

12 For the past 21 years, I have been involved in all
13 aspects of the California Workers' Compensation law and
14 community. From 1970 to 1979, I served on the Workers'
15 Compensation Appeals Board as a Commissioner, with both Governor
16 Reagan and Governor Jerry Brown appointees. During those years,
17 I participated in approximately 30,000 decisions that affected
18 the lives of that many Californians.

19 I am willing to serve in that role again.

20 During the last 11 years, I've worked as a trial
21 attorney involved in the litigation of hundreds upon hundreds of
22 Workers' Compensation cases. During the past nine years, while
23 employed by Employee Benefits Insurance Company, a subsidiary of
24 Orion Group that Senator Kopp mentioned, I managed the Trial
25 Counsel Department where I was responsible for fourteen trial
26 attorneys, both in California and Oregon, all involved in
27 litigation of Workers' Compensation cases.
28

1 Due to my other legal responsibilities at EBI, I
2 became familiar with every aspect of Workers' Compensation,
3 including underwriting, marketing, agent relationships, loss
4 control, claims, insurance regulatory work, corporate
5 litigation, and association liaison work.

6 I've served on Workers' Compensation committees of
7 the California Workers' Compensation Institute, the American
8 Insurance Association, and the Association of California
9 Insurance Companies.

10 I'm knowledgeable in every area of Workers'
11 Compensation law, practice, business and regulation from the
12 point of view of the employer and insurance carrier, but my
13 experience does not stop here. In all my decisions which
14 affected injured workers, be it as a Commissioner or as a trial
15 attorney, I have always strived to be fair to injured workers.

16 Why? Because I am and always have been mindful of my
17 early experience at age 19, when my father, a janitor, a man who
18 had immigrated from Italy in 1922, sustained an industrial
19 injury resulting in a need for back surgery. I'm acutely aware
20 of the devastating impacts such an injury can have on the
21 economic well being of a family. As a then freshman at the
22 University of San Francisco, I spent eight months while my
23 father was recuperating, doing his janitorial work to help
24 support the family and continue my education.

25 Maybe it was this experience, Senators, working as a
26 janitor those few months, that inspired me to study hard and
27 become a lawyer.
28

1 May I conclude by saying that I have chosen to make a
2 career of Workers' Compensation, and I'm willing to serve the
3 people of the State of California as a member of the Workers'
4 Compensation Appeals Board once again.

5 I was confirmed twice before by the Senate, and I
6 trust I will once more have the confidence of this Committee's
7 support.

8 Thank you, and now I will be pleased to answer any
9 questions.

10 CHAIRMAN ROBERTI: Thank you, Mr. Costamagna.

11 Why don't we hold questions.

12 First, is there anybody in support of
13 Mr. Costamagna's who would like to come and testify? Please
14 come forward.

15 MR. BOARDMAN: Mr. Chairman, Members of the Rules
16 Committee, my name is Albert G. Boardman. I served the State of
17 California for 13 years on the Workmen's Compensation Appeals
18 Board. During that time, I had the pleasure to serve with
19 Arthur Costamagna.

20 Arthur belonged to the opposite party than myself,
21 but I always found him reasonable; I always found him willing to
22 compromise when it was necessary, and I know him well as a
23 friend.

24 He is very important to an appeals board because he
25 gives it stability. Many appointees are running for judge, and
26 we have them just about long enough to get them broken in, and
27 they become judges. So, we need people who don't want to be on
28

1 the bench, and Arthur is one of them.

2 And I think that he should have the support of this
3 Committee. I think he's an asset to the State of California in
4 any capacity.

5 I thank you.

6 CHAIRMAN ROBERTI: Thank you very much, Mr. Boardman.

7 Any questions? Anyone else here to testify in
8 support? Please come forward.

9 MR. GUMINA: Mr. Chairman, Members of the Rules
10 Committee, my name is Russell Gumina, and I am the Executive
11 Director of the Salesian Boys' Club of San Francisco.

12 I've come before you this afternoon to encourage you
13 to confirm Mr. Costamagna's nomination to the Workers'
14 Compensation Appeals Board.

15 I have known Mr. Costamagna for most of my life and
16 have always found him to be a compassionate and caring person.
17 My first association with him, believe it or not, goes back
18 almost 40 years when he was my Cub Scout leader at the Salesian
19 Boys' Club. Art was a volunteer supervisor at the Club then and
20 was involved in many of the Club's activities. Like myself, he
21 made the Club a home away from home and spent countless hours
22 within the confines of its walls.

23 When he later married and started his own family, he
24 frequently returned to the Club to help out in any way he could
25 because he was thankful of the many things that were done for
26 him.

27 He was asked to join the Club's Board of Directors in
28

1 1970, which he readily accepted. Except for a brief
2 interruption because of a conflict with his work schedule, he
3 has served on the Board ever since. In the many years that he
4 has served on the Board, he has chaired numerous committees and
5 has been very instrumental in the success of the Boys' Club.

6 In 1970-71, he almost single-handedly spearheaded a
7 drive to raise \$50,000 for the construction of a new Salesian
8 Boys' Club facility. Most people thought he was foolish and
9 wouldn't be able to raise anywhere near that amount. True to
10 his word, however, he worked countless hours, many times after
11 he had worked ten or eleven hours at his own job, making
12 telephone calls and sending literature imploring people to help
13 the boys of the Salesian Boys' Club. Within a year, he was able
14 to announce that his goal had been reached, and construction of
15 the new Boys' Club began.

16 This, I think, gives you an idea of what type of man
17 Art Costamagna is. He cares about young people and people in
18 general and is willing to work for what he believes in. I can
19 honestly say that he is one of the most sincere and honest
20 persons I have ever met, and I am delighted to have him as a
21 member of our Board.

22 I would think that the two prerequisites for a person
23 to serve on the Workers' Compensation Appeals Board would be
24 competence in the field and compassion and understanding of
25 one's fellow man. Mr. Boardman and Senator Kopp have already
26 alluded to Mr. Costamagna's experience and competence in the
27 field.
28

1 I would wholeheartedly endorse Mr. Costamagna on the
2 basis of his social commitment to his fellow man. He is one of
3 the most caring individuals that I have ever met.

4 Recently, the Club had the good fortune to receive
5 approximately \$1.5 million in scholarship funds for boys of the
6 Salesian Boys' Club. When a committee was set up to help me
7 decide which boys would receive scholarships and how the money
8 would be doled out, I immediately asked Mr. Costamagna to chair
9 the committee because I knew I would be hard-pressed to find a
10 more conscientious or understanding person to do the job. Art
11 readily agreed to accept the challenge and is currently working
12 with me in this capacity.

13 I could go on and on about the things that Art has
14 done for the kids at the Salesian Boys' Club and for people in
15 general, for that matter. I think you already can see what type
16 of individual we are talking about here today.

17 I strongly encourage you to approve Mr. Costamagna's
18 nomination to the Workers' Compensation Appeals Board today. I
19 think he is extremely qualified and will be a credit to the
20 people of California. I, for one, can say unequivocally that if
21 I ever had to go before the Workers' Compensation Appeals Board,
22 I would feel confident that I would get a fair and impartial
23 hearing if Mr. Costamagna were serving on that Board.

24 Thank you.

25 CHAIRMAN ROBERTI: Thank you very much, Mr. Gumina.

26 SENATOR CRAVEN: May I ask a question?

27 CHAIRMAN ROBERTI: Senator Craven.
28

1 SENATOR CRAVEN: Mr. Gumina, just a question, and
2 nothing as it relates to the hearing.

3 Does the Salesian Boys' Club derive its name from the
4 Salesian Order?

5 MR. GUMINA: Yes.

6 SENATOR CRAVEN: Now I understand.

7 CHAIRMAN ROBERTI: Anyone else in support? Please
8 come forward.

9 MR. MARKEY: Mr. Chairman, Members of the Committee,
10 I'm Joe Markey with the California Self-Insurers Association.

11 I've known Mr. Costamagna for almost 20 years. I've
12 known him to be very competent. I've known him only in the area
13 of his professional experience.

14 I'm very pleased to be able to report that from our
15 point of view, he's very competent and will be a big asset to
16 the Appeals Board at a time when their workload is enormous.

17 Thank you.

18 CHAIRMAN ROBERTI: Thank you, Mr. Markey.

19 Is there anyone now in opposition?

20 MR. HENNING: Jack Henning, California Labor
21 Federation, AFL-CIO, speaking for the State AFL-CIO movement and
22 its affiliated parts.

23 I spoke last week with respect to the fact that we
24 have been denied any presence on the Workers' Compensation
25 Appeals Board, and we regard the contempt and the dismissal of
26 our interests as outrageous. To name three members when
27 vacancies occur, none from labor, is an assault on workers'
28

1 rights.

2 We have nothing against the character, the integrity
3 of Mr. Costamagna, but I am tempted to say that the long
4 discourse on the Salesian Boys' Club is irrelevant. I happen to
5 know that organization; it's a good organization. But it has
6 nothing to do with his place or appointment in terms of justice
7 to this Board.

8 A good friend, Joe Markey, testified on his behalf.
9 He should. Joe represents the insurance industry. It's an
10 insurance industry appointment.

11 Not one labor appointment on that Board. Are we
12 supposed to sit silent and agree? We say it's outrageous.

13 We're opposed very strongly to this appointment.

14 CHAIRMAN ROBERTI: Thank you.

15 MR. WARD: Mr. Chairman, William Ward, representing
16 the State Building Trades Council.

17 I share the remarks that Mr. Henning just made in
18 opposition to this appointment.

19 The Workers' Compensation Appeals Board is very, very
20 critical and important to the building tradesmen in the State of
21 California. We have a very deep concern that the make-up of
22 this Board is not going to be in the best interests of the
23 workers of this state, and we ask your opposition to the
24 appointment.

25 Thank you.

26 CHAIRMAN ROBERTI: Thank you very much.

27 Is there anyone else here in opposition?
28

1 MR. RABINE: Mr. Chairman, Members of the Committee,
2 my name is Merle Rabine. I'm past President and current Chair
3 of the Legislative Committee of the California Applicants'
4 Attorneys Association. We are lawyers who represent injured
5 workers in Workers' Compensation cases throughout the State of
6 California.

7 Last week, I discussed with you the importance of the
8 appointments that are currently proposed by the Governor, and we
9 also discussed the fact that these are six-year appointments and
10 will last beyond the term of the next Governor. And in
11 addition, discussed the fact that Governor Deukmejian,
12 throughout his appointments to the Appeals Board in his term,
13 has shown a decided bias in the interests of employers and
14 insurance companies.

15 We believe that this appointment is in keeping with
16 those prior appointments, and we think that it is not in the
17 interests of the State of California that Governor Deukmejian
18 control the Workers' Compensation Appeals Board so far beyond
19 his term. We think that the new Governor, whoever she or he may
20 be, should have the opportunity to make these appointments and
21 establish the policy.

22 I'd like to introduce Mervin Glow, a past President
23 of our organization and also a Commissioner on the Workers'
24 Compensation Appeals Board from 1975 to 1980, who worked with
25 Mr. Costamagna.

26 CHAIRMAN ROBERTI: Mr. Glow, yes.

27 MR. GLOW: Mr. Chairman and Members of the Committee,
28

1 it's with some unhappiness that I appear before you today to
2 testify, not the least of which has to do with the glories of
3 airline deregulation. It cost me \$469 to fly here from Orange
4 County and return tonight.

5 CHAIRMAN ROBERTI: I'm working on that one.

6 [Laughter.]

7 MR. GLOW: I think I can testify in Washington and
8 get there easier than I can to Sacramento; cheaper, at least.

9 I assume that I was asked to speak on behalf of the
10 California Applicants' Attorneys Association for two reasons.
11 One, every six months, I prepare a paper and conduct a two-hour
12 seminar on current developments in the Workers' Compensation
13 law. So, I've had the pleasure every six months, or the
14 displeasure every six months, of reading all the cases that have
15 to do with Workers' Compensation laws that come out of the
16 Deukmejian-appointed Board.

17 The second reason I assume I was asked to speak is
18 because I served as a Commissioner of the Workers' Compensation
19 Appeals Board and served with Mr. Costamagna for about 3½ years
20 where our terms overlapped. And that's another reason of
21 unhappiness, because I found Mr. Costamagna to be a gentleman,
22 never raised his voice.

23 However, I did not, in the course of my dealings with
24 him -- and our dealings were collegial, and I thought friendly,
25 and still consider Mr. Costamagna my friend -- but I did not see
26 that compassion for the industrially injured worker that he
27 testified to today.
28

1 What I saw was a very insurance company oriented
2 attorney who was a very rigid thinker, and who was not deciding
3 the Workers' Compensation laws in accord with the legislative
4 mandate nor the interests of the industrially injured worker.

5 In reviewing the decisions of the Deukmejian-
6 appointed Board every six months, I find the same thing: very
7 conservative, very insurance carrier oriented. They don't
8 follow the existing law.

9 When I speak to the educational seminar, I state,
10 "The issue in this case was such and such. The Workers'
11 Compensation trial judge decided in favor of the injured worker.
12 The Board reversed. The Court of Appeal reversed the Board."
13 It's almost like a political convention now. I say that so many
14 times that it's like the keynote speaker at a political
15 convention when they ask the question, and the whole convention
16 says, "No." Well, now the whole convention says, "The judge
17 decided in favor of the injured worker. The Appeals Board
18 reversed, and the Court of Appeal reversed the Board."

19 And this is what I see them doing in some of their
20 opinions. Particularly striking is, they seem to arrive at a
21 decisions, what they want to do, and then they instruct their
22 research staff to find some legal justification for it. And we
23 have the appellate -- or, we have the Board citing cases that
24 are 30-40 years old and have been overruled by a whole line of
25 appellate cases since that time, and of course, the Appellate
26 Court points that out to the Board in the cases in which they
27 exercise their discretion and grant a Writ of Review.
28

1 So, in conclusion, on behalf of the California
2 Applicants' Attorneys Association, I would urge you not to
3 confirm Mr. Costamagna. This is almost a feeling of déjà vu. I
4 was here in 1974, when the then outgoing Governor, Governor
5 Reagan, attempted to control the appointments of the incoming
6 Governor, whoever that might be, for the next four years. And
7 this Committee, the Rules Committee at that time, with little
8 exception, refused to let that happen and turned down two of the
9 three last-minute appointments by the Governor, and the new
10 Governor was then permitted to make appointments.

11 As Mr. Rabine pointed out to you, it is even more
12 critical now that the Rules Committee not -- we urge that they
13 not approve these last-minute appointments because now the
14 appointments are for six years, so that by virtue of the new
15 legislation, and it will be halfway into the term, or the second
16 term of the new Governor, whoever he or she may be. So, I would
17 strongly urge that you reject the confirmation.

18 CHAIRMAN ROBERTI: Thank you very much.

19 Senator Petris.

20 SENATOR PETRIS: In reviewing the decisions of the
21 courts, following the Board and their reversals, have they made
22 note of the fact that the Board did not follow the statute?

23 MR. GLOW: Well, the courts attempt to use polite
24 language, but the inference is certainly there, and they've
25 pointed out to the Board where they have failed to follow either
26 precedent law or statutory law in what they did.

27 There's a case called Garza vs. Workers' Compensation
28

1 Appeals Board that's been on the books for many, many years, and
2 it states that the decision of the trial judge shall be given
3 great weight, and that the trial judge shall not be reversed
4 unless there's overwhelming evidence that he was biased or
5 prejudiced or ignored the evidence.

6 And yet, this Board, and I'm speaking the last eight
7 years now, this Board consistently overrules the trial judge
8 only to be slapped down by the Court of Appeal, and they always
9 cite them to the Garza case, because they never have the
10 evidence that the judge acted in any way improperly.

11 SENATOR PETRIS: Thank you.

12 CHAIRMAN ROBERTI: Any other questions? Senator
13 Mello.

14 SENATOR MELLO: I'd like to ask Mr. Glow, it seems
15 you've been on the inside, but now I guess you're on the outside
16 to the extent that you are contending to look at and see how the
17 operation of the Workers' Compensation Board is handled, I
18 presume.

19 MR. GLOW: I'm a practicing attorney now representing
20 industrially injured workers, and because of the educational
21 role that I have with the California Applicants' Attorneys
22 Association, I do a very thorough review of the cases every six
23 months.

24 SENATOR MELLO: What I've been really concerned
25 about, first of all, California has the highest Workers' Comp.
26 rate and the lowest benefits in the nation. I hear a lot from
27 employers in my area and employees who are concerned about that.
28

1 In looking at the operation of the Workers' Comp.
2 Board and the Department of Industrial Relations, which I think
3 is a part of it, there's been testimony here before our Rules
4 Committee, formerly the unopened mail was measured by feet, and
5 in some offices it measured 250-300 feet. Now I understand
6 they're measuring it by quarters, which means, I guess, it's a
7 three-month area.

8 And then, because of the unopened mail, I understand
9 that judges, when a trial comes up, they have to go through a
10 lot of mail to find out a doctor's report or something.

11 Can you elaborate on this? How much unopened mail do
12 we have? Why is it happening? What is the result of such a
13 situation, and how this impairs the system really to function
14 responsibly to the injured workers?

15 MR. GLOW: Yes.

16 First, let me tell you why it's happening. It's
17 happening because there was and still is a calculated program by
18 the administration to not permit the system to work until they
19 received what they call, quote, "reform legislation" that they
20 thought they wanted.

21 There's been testimony before the Assembly Finance
22 Committee to that effect by the administration.

23 The reform legislation was passed, was a compromise
24 piece of legislation. The administration and the proponents of
25 that legislation appear not to be too happy with it.

26 I see nothing being done by the administration to
27 increase the clerical staffing to permit the mail to be
28

1 processed. It's getting worse, not better. I see just
2 recently, the appointment of any judges.

3 What I see the funds being spent for is opening up
4 branch offices all over the state with no explanation how that's
5 going to improve the processing of the mail and the ability of
6 the trial judges to make decisions based upon all the evidence.

7 That, however, in all fairness to Mr. Costamagna, is
8 no part of the duties of the Workers' Compensation Appeals
9 Board, which is strictly judicial and appellate.

10 SENATOR MELLO: It's the responsibility, I guess, of
11 the Department of Industrial Relations. Is that correct?

12 MR. GLOW: Yes.

13 SENATOR MELLO: You're familiar about the mail that
14 we've heard so much about. How much unopened mail is there
15 laying around the state?

16 MR. GLOW: I don't have the figures. All I can
17 tell you is that it is worse now in the boards in which I
18 practice, which is Long Beach, Santa Ana and Norwalk, than it
19 was when you heard testimony earlier and when both the Assembly
20 and the Senate heard testimony in connection with the Margolin-
21 Greene bill.

22 SENATOR MELLO: How long does it take for a injured
23 worker to get their case resolved?

24 MR. GLOW: That will vary from board to board,
25 Senator. But in some boards, for example in Santa Ana, it can a
26 year to 18 months from the time the injured worker requests his
27 case be heard and his attorney files a Declaration under penalty
28

1 of perjury that he is ready to proceed, until that case is heard
2 by the trial judge.

3 SENATOR MELLO: Is that because we have a lot of
4 unfilled positions in both judges and in clerical staff, or what
5 other reasons for the delay?

6 MR. GLOW: It's primarily understaffing of the board.

7 SENATOR MELLO: And also, on our information it says
8 that Mr. Costamagna most recently has been the Vice President
9 and Manager Trial Counsel of the Orion Group, an employee
10 benefits insurance company since 1982.

11 Have you experienced his work in representing this
12 group, whether or not it's been for the injured worker or
13 against the injured worker, or what category?

14 MR. GLOW: Well, I've had no experience with
15 Mr. Costamagna because he practiced in Northern California and I
16 practice in Southern California.

17 But I -- knowing Mr. Costamagna as a lawyer, if
18 nothing else, I'm sure he was doing a very good job for the
19 insurance companies that he represented and doing everything he
20 could to limit the benefits that the industrially injured worker
21 was claiming.

22 MR. COSTAMAGNA: Maybe I could address that question,
23 Senator.

24 CHAIRMAN ROBERTI: Please, yes.

25 MR. COSTAMAGNA: When I left the Board in 1979 -- I
26 also, Senator Mello, I would like to address your question of
27 the mail because I have some up to date information for you that
28

1 may help.

2 When I left the Board in 1979, Senator, I was not
3 sure whether I was going to continue a career in Workers'
4 Compensation. I think Mr. Glow might recall that. I took a
5 six-month leave of absence from the Board -- from employment at
6 that time, trying to determine my career.

7 I did end up going with a defense insurance -- a
8 defense law firm. And after two years of that experience, I
9 decided that if I was going to continue in Workers'
10 Compensation, I'd like to take a positive approach to the
11 Workers' Compensation field. I found an insurance company that
12 reflected that attitude.

13 There are insurance companies, and there are
14 insurance companies in this field, let me assure you. And many
15 of you have probably had that experience in automobile
16 insurance.

17 I went to work for EBI because EBI, Employee Benefits
18 Insurance Company, was a positive insurance company that
19 attempted to provide benefits for the injured worker, to
20 investigate the claims early, to provide the best medical care.
21 I lectured the claims people in that organization. I learned an
22 enormous amount while I was on the Board in nine years, and had
23 more compassion than Mr. Glow probably recognizes for the
24 injured worker. And I brought that philosophy as well as
25 enhanced it as I found it at EBI.

26 That is a company that does take a positive approach
27 to Workers' Comp. It has an approach right now of helping to
28

1 return people to work.

2 There's, again, as I say, there are carriers and
3 there are carriers in this business. Some litigate heavily and
4 some don't. Some try to get people their benefits, get them the
5 best medical attention they can, and get them back to work, and
6 close the file.

7 The longer litigation goes on, the more expensive it
8 is for a company as well, from a business standpoint. A good
9 company does not want to prolong litigation.

10 And Mr. Glow can testify as well as I, when you sit
11 on that Board, and I reviewed approximately 30,000 cases, when
12 those cases come to you and they are that thick, you know that
13 an awful lot of mistakes have gone on in that file on both
14 sides. The attorneys should have tried to resolve those cases
15 long, long before. But sometimes, they may be working for a
16 carrier that is not as responsive to the law.

17 I think that the new law is going to go a long way in
18 helping this situation, because the new law demands that the
19 carrier, that it steps up immediately to bat and examine those
20 -- to investigate the claim. They have only 90 days before
21 there's a presumption of liability of industrial causation. And
22 within those 90 days, if they do not live up to their
23 responsibility, it's presumed to be industrial. Then they are
24 going to have to provide those benefits.

25 The system of providing qualified medical examiners,
26 QMEs, will be implemented the first of the year. It's also
27 going to go a long way to streamlining the system and providing
28

1 benefits.

2 And lastly, the audit and penalty aspects of the new
3 law are going to separate the good insurance companies from the
4 bad insurance companies. And I might say, the good self-insured
5 from the bad.

6 And this is why I believe this new law is a positive
7 step, and those positive carriers, and those positive
8 self-insureds that carry out their primary responsibility will,
9 in the long run, make the system better. If they don't, I'm
10 afraid it may be back to the drawing board for the Legislature,
11 but I personally believe that it will be.

12 That's the kind of company I associated with during
13 those nine years, and I'm proud of the law firm I've built
14 there, and all of the lawyers that I helped train, both in
15 California and Oregon, have the same philosophy as I did. I
16 learned a lot. I learned a lot from Mr. Glow, working with him
17 for five years.

18 And if I may, just as an example, I did a little
19 research myself, and I didn't know Mr. Glow was going to testify
20 here today. He testified against me, as he said, in 1974. He
21 doesn't recall it. He apologized to me for having done so in
22 1979 at a going away party for Mr. Boardman and myself and
23 Mr. Ashcraft who were retiring. And he apologized because he
24 said that he was mistaken in what he had said in 1974 about me
25 personally, maybe not about the system or the fact that I was
26 then appointed or reappointed by Governor Reagan at the time.

27 But from 1976 to 1979, the Brown years that I served
28

1 with, as I refer to them, as the Jerry Brown appointees, there
2 were 30 en banc decisions. Now, Mr. Glow has given you some
3 vague generalities about appellate decisions, as I heard him.
4 Of the 30 en banc decisions -- en banc decisions means that
5 those were decisions that are decided by the seven members of
6 the Appeals Board -- there were 30 during those years. And I
7 concurred in 26 of the 30 times.

8 I have my four dissents here and am willing to submit
9 them to this Committee for examination.

10 CHAIRMAN ROBERTI: Please do.

11 MR. COSTAMAGNA: And in each of these dissenting
12 opinions, at least two of them were that I believed that the
13 then Board had gone beyond the legislative intent, and I
14 believed that I should dissent because they were stretching the
15 law a little bit further than I thought.

16 But the important thing is that I concurred with them
17 26 times, so I don't know where Mr. Glow feels that I was out of
18 step.

19 CHAIRMAN ROBERTI: Those were the Brown years?

20 MR. COSTAMAGNA: Those were 1976 to 1979, Senator
21 Roberti.

22 Those were: the Slotten case, I'm sure you remember
23 that one; the Bradburn case; the Becker case; and the Cabello
24 case.

25 The Becker case had to do with the rating of the
26 lower extremities; do you remember? We debated that at length.
27 The guidelines, permanent disability guidelines, which called
28

1 for plateau ratings for certain limitations -- light work
2 limitations to no heavy lifting and so on -- were primarily
3 designed for back and other types of disabilities, but not the
4 lower extremities.

5 In that particular case, the Board decided that it
6 would extend those plateaus to the lower extremities. That's
7 really the prerogative of the Administrative Director, who
8 should have put out regulations to that effect, and so I
9 dissented.

10 So, I think that maybe Mr. Glow's statements are a
11 little bit exaggerated.

12 SENATOR MELLO: What about the mail?

13 MR. COSTAMAGNA: Yes, sir, Senator Mello.

14 I checked. In the past, we can and I do not have any
15 responsibility for this at all. As a member of this Board, no
16 Commissioner has. This is the responsibility of the
17 Administrative Director.

18 I spoke with the current Deputy Director, and his
19 name is Jack Merrill, just this past week. He said the mail
20 backlog has been substantially cut back in most offices. The
21 problem is well past what it was that people testified to six
22 months ago.

23 Mr. Glow, I don't recall when you retired from the
24 judgeship at Long Beach. Was that more than six months ago?

25 MR. GLOW: Oh, yes.

26 MR. COSTAMAGNA: There was a mail task force of
27 summer students, six to eight summer students, working to clean
28

1 up especially the office in Norwalk. I know you mentioned that.

2 SENATOR MELLO: You're not answering my question.

3 How many quarters is it now? Do you know how many
4 feet?

5 MR. COSTAMAGNA: My understanding is that the huge
6 backlog of mail, the peak of that is long gone.

7 There are no crises in Northern California: the
8 Fresno office, the Santa Rosa office, San Francisco office and
9 San Jose office, Stockton office, indeed, the Salinas Office.

10 SENATOR MELLO: That's because I've been actively
11 trying to get the show on the road down there.

12 Let me ask you, though, quantity is one thing. Does
13 this create any delays by having all this mail, and people don't
14 know whose case it belongs to?

15 MR. COSTAMAGNA: Certainly it does create delays for
16 both sides, Senator.

17 SENATOR MELLO: Both sides. There's only one side
18 here, the injured worker.

19 MR. COSTAMAGNA: I mean, there is the fact that the
20 employer and the carrier are represented as well. They
21 sometimes file a Declaration of Readiness and are sometimes
22 prepared before the applicant. Sometimes they want to get the
23 case processed, and that is not possible.

24 I personally was taken into an office room in Oakland
25 about two years ago by the presiding judge and saw all the mail
26 that was stacked there.

27 Now I know it has all been cleared up.

28

1 SENATOR MELLO: What's happened on previous
2 occasions is, they've told us about mail that stacked 200 and
3 some feet high, and that's stacking them.

4 Is that correct?

5 MR. COSTAMAGNA: I've heard those stories, too.

6 SENATOR MELLO: They're not stories. These are facts
7 that were testified to, not under oath, but here before the
8 Rules Committee, that they had mail that was stacked 250 feet
9 high, and they changed it from feet to quarters. I guess a
10 quarter is three months.

11 Apparently the amount of mail has even increased, and
12 here, about a year ago, we had 25 unfilled administrative law
13 judges and support staff.

14 And Mr. Glow pointed out, and I'm of the same
15 opinion, Mr. Rinaldi and the administration want the reforms,
16 want to bring it to its knees before they're going to let the
17 law operate and provide benefits for injured workers.

18 MR. COSTAMAGNA: I can't disagree.

19 SENATOR MELLO: I see you're technically a
20 Commissioner on the Board. And being appointed by the Governor,
21 you ought to raise hell with somebody.

22 MR. COSTAMAGNA: Well, I looked into it.

23 SENATOR MELLO: It might cost you your job, but as a
24 citizen of this state, you ought to.

25 MR. COSTAMAGNA: It wouldn't bother me, if I could do
26 something about it.

27 But I have called just this week and mentioned to
28

1 Jack Merrill, who is the Deputy Chief of the Division of
2 Workers' Comp. He assured me that the crisis is over.

3 SENATOR MELLO: We've heard the same thing before.

4 MR. COSTAMAGNA: I can only tell you --

5 SENATOR MELLO: I'm talking about the injured worker
6 who walks in my office. They don't walk in; they call. We get
7 the call from the family after their homes are being attached,
8 they're behind in payments, and they can no longer fend off the
9 bill collectors because the process is so slow, it's an
10 embarrassment.

11 I've been an employer myself. I'm embarrassed by the
12 fact that employers are paying such a high Workers' Comp. fee,
13 and at the other end, the workers are complaining about the
14 benefits.

15 Where is all the money going?

16 MR. COSTAMAGNA: Well --

17 SENATOR MELLO: I know a lot is going to the
18 insurance companies, a hell of a lot.

19 MR. COSTAMAGNA: There are providers in all aspects
20 of this business, Senator. This is an almost \$10 billion
21 industry. There are medical providers, there are rehabilitation
22 providers, there are insurance company providers.

23 SENATOR MELLO: Let me ask Mr. Rabine, I remember you
24 testified here before.

25 I read a statement a few years ago about the profits
26 just from insurance companies. Do you know what the latest
27 amount is?
28

1 MR. RABINE: Well, what counts as profit is highly
2 controversial. We got into it last year during the process of
3 the Margolin-Greene reform act.

4 SENATOR MELLO: They have reserve to operate on. How
5 much is surplus over their expenses?

6 MR. RABINE: We know that they have a 30 percent
7 expense load, and their actual expenses, which includes a
8 percentage for profit, we know that their actual expenses are
9 almost 26 percent.

10 So, on that basis, about 10 to 12 percent of the
11 premium is profit, not counting the expense. That's a lot of
12 profit. Now, some of that is dividend and is sent back to the
13 employers after three years.

14 SENATOR MELLO: Those are the same figures I looked
15 at. And sure, it goes to hospitals and everybody along the
16 line, but I know injured workers are not getting it. They're
17 the low person on the totem pole.

18 MR. COSTAMAGNA: I don't think that's accurate. I
19 believe a recent study by the Workers' Compensation Institute
20 showed the net return on the premium dollar below two percent.

21 SENATOR MELLO: Net return.

22 MR. RABINE: Exactly. That's what the controversy is
23 about.

24 SENATOR BEVERLY: In any event, I don't believe we
25 can put all the evils of the Workers' Compensation system on
26 this nominee.

27 CHAIRMAN ROBERTI: That point is well taken.
28

1 SENATOR MELLO: I hate to be cut off by a fellow
2 Member, but I've met payrolls and paid Workers' Comp. I've
3 belong to the union, and union contracts and everything. My
4 employees really put out for me and everything.

5 But they keep blaming the doctors and everybody else,
6 but the insurance companies are making a lot of money out of
7 Workers' Comp., and it's embarrassing. The injured workers
8 aren't getting theirs. They should get it within 30 days.

9 MR. COSTAMAGNA: The new law is going to help
10 enormously.

11 SENATOR MELLO: It won't help unless the people
12 running it are willing.

13 MR. COSTAMAGNA: I agree. There are good companies
14 and bad companies.

15 CHAIRMAN ROBERTI: Any further questions? Anyone
16 else in opposition?

17 MR. QUILLIN: Mr. Chairman, Members, my name is Jim
18 Quillin, California State Council of Machinists.

19 I suppose I should have spoken when Mr. Henning and
20 Mr. Ward came up.

21 I just wanted to say that I hope the Committee
22 understands that workers in the State of California look to this
23 Board to provide some balance for injured workers. I know that
24 I was not here at the last hearing. I understand it was
25 testified to that for the past 20 or 40 years, there has been a
26 representative on this Board representing workers or from labor.
27 At the moment there is not.
28

1 I just -- and that's why I've stuck around. I just
2 have to suggest to you that the full impact of this
3 confirmation, if it goes through, not just this gentleman here
4 -- I've never met this gentleman before, but he sounds very
5 impressive -- but there are three six-year appointments in a
6 seven-member Board that the workers of the State of California
7 have got to live with for the next six years.

8 I've got to tell you, in my judgment, if they were
9 confirmed, and no worker representative to this seven-member
10 Board that's there to protect and serve injured workers, it's
11 going to send shock waves through the labor movement in
12 California.

13 I strongly urge that you seriously look at the impact
14 this will have on into the future.

15 Thank you.

16 CHAIRMAN ROBERTI: Thank you, Mr. Quillin.

17 Are there any other witnesses either pro or con?

18 My suggestion on the appointment of Mr. Costamagna
19 and Ms. Marshall, I've been noticing their effective dates.
20 Ms. Marshall indicated it was June 5th, and Mr. Costamagna's is
21 July 2nd, which, under our normal procedures, we would
22 deliberate somewhat longer on these matters.

23 It's a legitimate concern that there is no labor
24 representative on the Board or somebody who comes out of
25 organized labor.

26 So, my suggestion on those two appointments is that
27 they be put over for vote until the first meeting in December.
28

1 If they are recommended for confirmation to the Floor, then it
2 is incumbent upon us to make sure, while we are in session, that
3 they would be taken up if the Committee so recommended.

4 In the case of Mr. Margosian, his effective date was
5 January 4th of 1990, of this year. Had it not been for
6 Mr. Margosian's illness -- we repeatedly tried to schedule him,
7 but he was ill -- his appointment would have come up before the
8 spring break without an ounce of controversy as to who the
9 appointing power was.

10 So, it would be my recommendation that the
11 appointments of Marshall and Costamagna be put off for vote in
12 Committee. If recommended to the Floor, that they be taken up
13 at that time in December.

14 I will personally support the appointment of
15 Mr. Margosian simply because it's almost a year's delay because
16 of his illness, something beyond his control, that he hasn't
17 been heard.

18 So, that's my recommendation, and we'll take them up
19 by the numbers.

20 Is there a motion on Margosian?

21 SENATOR CRAVEN: What is it?

22 CHAIRMAN ROBERTI: A motion to recommend
23 Mr. Margosian to the Floor.

24 SENATOR CRAVEN: Very well, so move.

25 CHAIRMAN ROBERTI: Senator Craven moves
26 Mr. Margosian's confirmation be recommended to the Floor.

27 Secretary will call the roll.
28

1 SECRETARY WEBB: Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Senator Mello.

4 SENATOR MELLO: No.

5 SECRETARY WEBB: Senator Petris. Senator Craven.

6 SENATOR CRAVEN: Aye.

7 SECRETARY WEBB: Senator Roberti.

8 CHAIRMAN ROBERTI: Aye.

9 The vote is three to one; Mr. Margosian is
10 recommended to the Floor.

11 On the nominations of Marshall and Costamagna, the
12 Chair will entertain a motion that, for vote only, they be put
13 over until the first meeting in December.

14 SENATOR MELLO: So move.

15 CHAIRMAN ROBERTI: Senator Mello moves.

16 Secretary will call the roll.

17 SECRETARY WEBB: Senator Beverly.

18 SENATOR BEVERLY: Aye.

19 SECRETARY WEBB: Senator Mello.

20 SENATOR MELLO: Aye.

21 SECRETARY WEBB: Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.

27 The vote is five to zero; that motion carries.
28

1 Thank you, Mr. Costamagna.

2 MR. COSTAMAGNA: Thank you very much, Senators.

3 Thank you all.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately
7 5:27 P.M.]

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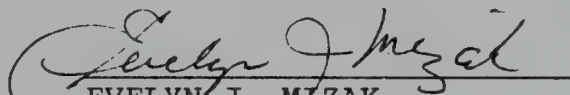
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of August, 1990.


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SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ABEL S. ARMAS, Member
Youthful Offender Parole Board

MAUREEN A. O'CONNELL, Member
Board of Prison Terms

RON KOENIG, Chairman
Board of Prison Terms

MELISSA K. NAPPAN, Legislative Advocate
California Attorneys for Criminal Justice

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P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN ROBERTI: Governor's Appointees, on the appointment of Abel S. Armas, my recommendation would be to put that over until December. I want to be fair to Mr. Armas; I want to be fair to those who have challenged his appointment.

Normally, we do give these appointments more time, but because of the constraints of trying to get this passed, or take them up before the end of the session, we just didn't give it the normal amount of time.

So, Mr. Armas, unfortunately, has a controversial appointment to a controversial board.

So my recommendation would be to put it over until December. I'll entertain a motion to do that.

SENATOR CRAVEN: Move.

CHAIRMAN ROBERTI: Senator Craven so moves.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to zero; to the first meeting of the Rules Committee in December, the appointment will be put over.

1 Thank you for coming, Mr. Armas.

2 [Thereupon the Rules Committee
3 acted upon legislative agenda
4 items.]

5 CHAIRMAN ROBERTI: Maureen A. O'Connell, Member of
6 the Board of Prison Terms.

7 MS. O'CONNELL: Good morning.

8 CHAIRMAN ROBERTI: Good morning.

9 We will ask you what we ask all the Governor's
10 Appointees, and that is why you feel you're qualified to assume
11 this position.

12 MS. O'CONNELL: Well, I have been doing the job now
13 for four years. I am a qualified law enforcement professional.
14 I have dedicated my life to public service.

15 And I first wish to say that I'm very grateful to be
16 heard this morning. I know how busy this time of year is, and I
17 am very, very grateful to be having this opportunity.

18 I have been told I'm a little tougher than others,
19 but I think that the job is a tough one, and I take it very
20 seriously.

21 CHAIRMAN ROBERTI: Are there any questions of
22 Ms. O'Connell? Senator Mello.

23 SENATOR MELLO: This was just added on to the agenda,
24 so I didn't get a chance to look at it for any in depth period
25 of time.

26 Let me ask first our consultant, what's the effective
27 date of this appointment?
28

1 MS. MICHEL: Her 365 days run out in March of '91.

2 It was transmitted in May, May 25th, at the end of May of this
3 year.

4 Her term would run until 1994.

5 SENATOR MELLO: We've heard a lot of appointments to
6 the Board of Prison Terms and all the other law enforcement.

7 I personally would like to put it over for a while,
8 maybe our December meeting or even January, until we can look
9 into it more.

10 I really think that our whole system of criminal
11 justice is expanding at such an alarming rate. I want to make
12 sure that the people that are on these boards have some feeling
13 about rehabilitation and making sure that those dangerous
14 persons are locked up and not allowed to ever get out if they're
15 going to be recommitting crimes, and the ones that have a chance
16 for rehabilitation, hopefully, they'll be sensitive to that.

17 I'm not saying that you're not. I just don't know
18 anything about your background. I haven't had the time to
19 review it.

20 Your name was put on the agenda, I believe, last
21 Wednesday --

22 MS. MICHEL: This Wednesday.

23 SENATOR MELLO: I mean this Wednesday as an add-on,
24 and we've just been working here 14 hours a day. For that
25 reason, I just --

26 MS. O'CONNELL: Well, I appreciate that, Senator.

27 I have been a police officer for over ten years and
28

1 have served four years already.

2 SENATOR MELLO: Yes, it's just that right now, I'm
3 just saying what my feelings are.

4 CHAIRMAN ROBERTI: If you look at the support list,
5 it's an impressive bipartisan support list of people whose
6 judgment, I think, can be trusted: Nicholas Petris, Leo
7 McCarthy, Arlo Smith, and then on the other side, the Sheriff in
8 L.A. County, Sherman Block.

9 Normally, we do take more time on these, but there
10 was a problem. The paper work didn't get to us, and I don't
11 know -- I think the reason was that you were ill and the Board
12 didn't get it in time.

13 MS. O'CONNELL: I moved, and I didn't get the letter.

14 MR. KOENIG: Senator.

15 CHAIRMAN ROBERTI: Yes, please come forward.

16 MR. KOENIG: I'm Ron Koenig, Chairman of the Board of
17 Prison Terms for the last 5½ years. I'd like to speak on behalf
18 of Ms. O'Connell.

19 I've known her for four years, and I know the type of
20 hearing that she conducts because I review most of the hearings.

21 Senator Nejedly, who was the author of the
22 determinate sentencing law back in 1977, recently testified
23 before Senator Maddy's committee on indeterminate sentencing. I
24 invited Senator Nejedly to sit in on a hearing of the Board of
25 Prison Terms, and he accepted and sat in on a hearing a couple
26 months ago at the California Medical Facility in Vacaville.

27 This was a lifer hearing, an initial lifer hearing,
28

1 the typical hearings that we conduct and the Commissioners,
2 Maureen, conducts every day, week after week, during the year.

3 He was very impressed. In fact, his comment to me
4 afterwards was that if the Adult Authority had conducted this
5 quality of a hearing prior to 1977, we probably would not have
6 had the determinate sentencing law.

7 Maureen has been a part of this. We've made some
8 major changes in the process, the hearing process, so that we do
9 not only consider the inmate himself, the fact that he has
10 improved himself during the period of time that he's served in
11 the institutions, but also due process to that inmate, and also
12 the victims and the people of the State of California, so he
13 doesn't go back out and commit those crimes.

14 Maureen is the type of Commissioner, one of nine
15 appointed, that delves deeply into the lifer hearing. She makes
16 excellent decisions. She's the type of person that, like all of
17 us, that wants to make sure when she does grant a parole, that
18 that person is going to go out into society and be a productive
19 member.

20 I have no doubt in my mind that she's one of the
21 better Commissioners that we have, and I would encourage you
22 that you -- that she remains on the Board and continues on
23 making decisions as she has in the past.

24 CHAIRMAN ROBERTI: Thank you very much.

25 Is there any opposition in the audience? Please come
26 forward.

27 MS. NAPPAN: I'm Melissa Nappan, California Attorneys
28

1 for Criminal Justice.

2 We are not currently opposed to this confirmation.
3 We are simply asking that the Committee put it over, as they
4 have the last hearing, until December.

5 Some members of the Board of Directors of our
6 organization have raised some specific complaints, and since we
7 represent the largest group of criminal defense attorneys in the
8 state who do represent inmates before the Board of Prison Terms,
9 we'd like the opportunity to investigate those complaints.

10 We are merely asking that you continue this until
11 December so we can look into those complaints.

12 CHAIRMAN ROBERTI: Thank you very much.

13 Senator Craven.

14 SENATOR CRAVEN: Would you tell me the name of your
15 organization, please?

16 MS. NAPPAN: California Attorneys for Criminal
17 Justice. We represent about 3,000 criminal defense attorneys
18 statewide.

19 SENATOR CRAVEN: I see.

20 Do they monitor as well as appear at the hearings of
21 the Board of Prison Terms?

22 MS. NAPPAN: We have many attorneys who represent
23 clients before the Board of Prison Terms.

24 SENATOR CRAVEN: Yes, but you don't have a monitoring
25 organization?

26 MS. NAPPAN: No, we do not. We do not have a
27 monitoring organization.
28

1 We have, recently at a board meeting, heard some
2 complaints and decided to investigate those complaints.

3 SENATOR CRAVEN: Well, the reason I bring that point
4 up is the fact that if you monitored, you would presumably get
5 an overall picture of the entire operation.

6 If you talked to those persons who came in, in
7 effect, in the defense category, and perhaps did not win, I
8 would have a feeling that some of their comments may be based
9 upon the experience that they received before the Board, and
10 that that may not necessarily be the appropriate or the total
11 picture.

12 However, if you don't have any monitoring
13 organization, why, I guess that doesn't have as much meaning as
14 I had felt.

15 Mr. Chairman, I know Senator Mello has some thoughts
16 that, perhaps, are much more far reaching and deep than we could
17 conduct business with today, and in deference to the Senator, I
18 think perhaps it would be well that we put it over.

19 CHAIRMAN ROBERTI: Why don't we recess for about two
20 minutes.

21 [Thereupon a brief recess was taken.]

22 CHAIRMAN ROBERTI: The Committee will come to order.
23 Do I hear a motion?

24 SENATOR CRAVEN: Move confirmation.

25 CHAIRMAN ROBERTI: Senator Craven has moved
26 confirmation.

27 Secretary, call the roll.
28

1 SECRETARY WEBB: Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Senator Mello. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Senator Craven.

6 SENATOR CRAVEN: Aye.

7 SECRETARY WEBB: Senator Roberti.

8 CHAIRMAN ROBERTI: Aye.

9 The vote is four to zero; confirmation is recommended
10 to the Floor.

11 MS. O'CONNELL: Thank you very much.

12 [Thereupon this portion of the
13 Senate Rules Committee hearing
14 was terminated at approximately
15 12:30 P.M.]

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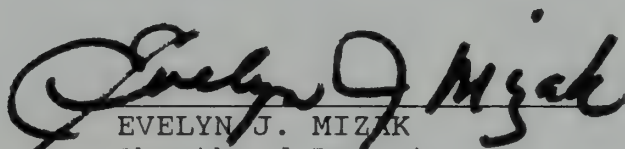
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SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROLAND ARNALL, Member

Trustees of the California State University

NAN J. DRAKE, Member

California Integrated Waste Management Board

SENATOR ART TORRES

CHARLES IMBRECHT

GORDON HART

Sierra Club

MARK MURRAY

Californians Against Waste

S. SUE JOHNSON, Member

Regents of the University of California

SENATOR ROBERT PRESLEY

RALPH M. OCHOA, Alumni Regent
U.C.L.A.

ROBERTO VELLANOWTH

LULAC

Hispanic Chamber of Commerce of Sacramento

APPEARANCES (CONTINUED)

JESSE ORTA, Commander
Veterans Affiliated Council

ALICE J. GONZALES, Member
Regents of the University of California

ARTHUR J. COSTAMAGNA, Commissioner
Workers' Compensation Appeals Board

DIANA MARSHALL, Commissioner
Workers' Compensation Appeals Board

JACK I. HORTON, Chief Deputy
Legislative Counsel

CHARLES LAWRENCE SWEZEY, Former Member
Workers' Compensation Appeals Board

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: The Committee will come to order.
Governor's Appointees, Mr. Roland Arnall, Member of
the Board of Trustees of the California State University.

One moment, Mr. Arnall.

To the audience, I'd like to mention that Mr. Abel
Armas has requested that he not be taken up today, Member of the
Youthful Offender Parole Board.

We'll ask you the same question we ask all the
Governor's Appointees, and that is why you feel you're
qualified, in this case, to maintain this position?

MR. ARNALL: I think that I've -- let's see, this is
going on my ninth year, and I believe I've got a reasonably
decent understanding of how the system works. And I think that
I've added some value over the last few years, and I'd like to
continue.

I'm very appreciative of being reappointed.

CHAIRMAN ROBERTI: Very good.

Is there any discussion or debate on Mr. Arnall's
appointment?

SENATOR CRAVEN: Move the appointment.

CHAIRMAN ROBERTI: Senator Craven moves.

I know Mr. Arnall first-hand. He's very interested
and has performed diligently in this position.

Is there any opposition in the audience?

Then on Senator Craven's motion, Secretary will call

1 the roll.

2 SECRETARY WEBB: Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY WEBB: Senator Roberti.

11 CHAIRMAN ROBERTI: Aye.

12 The vote is five to zero.

13 MR. ARNALL: Mr. Chairman, thank you. Thank you,
14 Senators.

15 [Thereupon the Rules Committee
16 acted upon legislative agenda
17 items.]

18 CHAIRMAN ROBERTI: The next appointment is Mr. Arthur
19 Costamagna, Commissioner of the Workers' Compensation Appeals
20 Board.

21 MS. MICHEL: I think both of the Commissioners of the
22 Appeals Board are going to be delayed getting here from San
23 Francisco, both he and Ms. Marshall.

24 CHAIRMAN ROBERTI: Fine, thank you.

25 The next appointment is Nan J. Drake, Member of the
26 California Integrated Waste Management Board.

27 SENATOR MELLO: Mr. Chairman, before we hear the
28

1 testimony, may I ask a question.

2 I asked for a copy of this opinion from the
3 Legislative Counsel on Nan Drake based on the qualifications as
4 required by statute. Their opinion is, and I'll read the last
5 paragraph:

6 "Accordingly, it is our opinion
7 that the person in question is not
8 eligible for appointment to the
9 board pursuant to subdivision (b) of
10 Section 40401."

11 May I ask Ms. Michel about her interpretation of
12 that opinion through the Chair?

13 CHAIRMAN ROBERTI: Yes, Nancy.

14 MS. MICHEL: All I can say is what Leg. Counsel has
15 provided to us, which is their opinion that she does not
16 qualify for this slot.

17 I do need to point out that Ms. Drake provided us
18 with some information this morning about something new.

19 CHAIRMAN ROBERTI: Why don't we have Ms. Drake
20 testify.

21 So, we'll ask you the same question we ask all --

22 MS. MICHEL: We're waiting for additional
23 Legislative Counsel opinion.

24 CHAIRMAN ROBERTI: -- Governor's appointees, and
25 that is why you feel you're qualified to assume this
26 position, and could you speak in your remarks directly to the
27 point of your qualifications vis-a-vis the specifications for
28

1 the position to which you've been appointed.

2 MS. DRAKE: Certainly, I will, Mr. Chairman.

3 I have been appointed in the environmental slot,
4 which does say that you must be a past board member or a
5 board member, either appointed or elected, of a nonprofit
6 environmental organization, or an organization that is
7 created to protect the environment.

8 I accepted this appointment in good faith because I
9 do believe that I meet the requirements of the law. I did
10 serve as a member of the Ventura Regional Public Facilities
11 Corporation, which -- we tried to make the bylaws or the
12 articles of incorporation.

13 CHAIRMAN ROBERTI: The Ventura Regional --

14 MS. DRAKE: Public Facilities Corporation.

15 We faxed this, I believe, to the Rules Committee on
16 Friday.

17 CHAIRMAN ROBERTI: Senator Craven.

18 SENATOR CRAVEN: On this point, Mr. Chairman.

19 We're talking, and the nominee has mentioned, that
20 she was filling the environmental slot, which has to do with
21 recycling and some other items. And she references the
22 Ventura Regional Public Facilities Corporation, whose:

23 "... specific and primary purpose
24 for which this corporation was
25 formed are:

26 "To render financial assistance
27 to the Ventura Regional Sanitation
28

1 District, State of California, by
2 financing, refinancing, acquiring,
3 constructing, improving, leasing and
4 selling of buildings, building
5 improvements, equipment, electrical,
6 water, sewer, road and other public
7 improvements, lands, and any other
8 real or personal property for the
9 benefit of the District.

10 "To acquire by lease, purchase
11 or otherwise, real or personal
12 property or any interest therein; to
13 construct, reconstruct, modify, add
14 to, improve or otherwise acquire or
15 equip buildings, structures or
16 improvements and they (by sale,
17 lease, sublease, leaseback, gift or
18 otherwise) make any part or all of
19 any such real or personal property
20 available to or for the benefit of
21 the District.

22 "To promote the common good and
23 general welfare of the District, and
24 the governmental enterprises in the
25 District by the acquisition of the
26 real and personal property as
27 hereinabove described."
28

1 Nowhere do I find anything about recycling or
2 environment as such.

3 MS. DRAKE: Senator Craven, this Facilities
4 Corporation was set up to support the Ventura Regional
5 Sanitation District. And basically, it was part of the
6 ability to meet the funding of the Eastin bill, which as you
7 all know, was the bill that basically said that all landfills
8 should have good future planning and the ability to be able
9 to close the landfills in a timely and environmentally safe
10 manner. Five million dollars was needed in this particular
11 instance, and it's also a short-life landfill. It's only a
12 five-year landfill. So, this was necessary.

13 And if you read the mission statement of the
14 Ventura Regional Sanitation District, it's to teach, promote,
15 and implement the concepts of waste reduction, reuse and
16 recycling among many other categories.

17 This organization, until 1989, was also the only
18 organization in Ventura County responsible for all of the
19 things which I just read -- to teach and promote recycling --
20 also, the educational programs, the beach cleanup programs,
21 they ran all of the household hazardous waste programs. They
22 also coordinated all of the volunteer activities of many
23 small nonprofits who had their own recycling activities in
24 such places as Ojai.

25 Basically, Ventura Regional Sanitation District was
26 the hands-on agency for all waste matters in Ventura County
27 that -- of course, they did not deal with the regulation of
28

1 any of the landfills. They basically were the educational
2 and the working arm of the waste disposal in Ventura County.

3 So, this agency that was set up basically, and as
4 you read very aptly -- thank you very much, Senator Craven --
5 basically a support agency for this environmental protection
6 agency.

7 SENATOR CRAVEN: You know, I can't help but see,
8 the piece from which you are reading, you did not submit that
9 to me.

10 MS. DRAKE: Yes, it's in the packet that was
11 submitted to you, to your office. All of this information
12 was submitted on November 11th.

13 SENATOR CRAVEN: November 11th? Well,
14 unfortunately, I didn't see it.

15 What's the date of that?

16 MS. DRAKE: November 11th.

17 SENATOR CRAVEN: The date of the piece to which I
18 have referred, the one with the "V" on the page. The one
19 that you just read from.

20 MS. DRAKE: Oh, that is the date. It's just a
21 piece of information pulled out of it, and that's the date it
22 was submitted.

23 SENATOR CRAVEN: What office were you elected to in
24 that group?

25 MS. DRAKE: I was appointed to be a board member.

26 SENATOR CRAVEN: To be, which means --

27 MS. DRAKE: I was a board member.
28

1 SENATOR CRAVEN: You were appointed to a board of
2 the organization?

3 MS. DRAKE: Yes, I served for four years.

4 SENATOR CRAVEN: Do the people in Ventura County
5 look upon that agency as a governmental agency?

6 MS. DRAKE: I would think that they look upon it as
7 an environmental protection agency and also a landfill
8 operator, dealing with most of the trash. And I think when
9 you talk about things like that, they talk about recycling,
10 and this is what this agency does. It basically was the only
11 agency involved in recycling.

12 SENATOR CRAVEN: I'll ask you again. Do they look
13 upon it as a governmental agency?

14 MS. DRAKE: [No response.]

15 SENATOR CRAVEN: Is it, in effect, not a
16 governmental agency?

17 MS. DRAKE: It is a nonprofit corporation set up to
18 serve the public good.

19 SENATOR CRAVEN: Under whose aegis?

20 MS. DRAKE: It's set up by a joint powers agreement
21 with all of the cities and the County of Ventura.

22 SENATOR CRAVEN: I would say that it certainly must
23 have a governmental aura if it was done by all of the
24 municipalities as well as the County of Ventura; right?

25 MS. DRAKE: An aura, yes.

26 SENATOR CRAVEN: And you look upon that, therefore,
27 as being environmental?
28

1 MS. DRAKE: Very much so.

2 SENATOR CRAVEN: The bill text which you're basing
3 some of this on, some of the antagonists are:

4 "One member appointed by the
5 Governor who has served as an
6 elected or appointed official of a
7 nonprofit environmental protection
8 organization whose principal purpose
9 is to promote recycling and the
10 protection of air and water
11 quality."

12 MS. DRAKE: Correct.

13 SENATOR CRAVEN: You're saying that my reading of
14 it is correct?

15 MS. DRAKE: I'm saying --

16 SENATOR CRAVEN: But my understanding isn't?

17 MS. DRAKE: Well, I think that this agency
18 basically that we're talking about now, the Regional
19 Sanitation District, is an agency set up for the
20 environmental protection of the citizens of Ventura County.

21 SENATOR CRAVEN: Well, I don't think that any sewer
22 district could be anything except for public good and for the
23 environment as a whole. That I would have to agree upon.
24 But you could have said that in 1965.

25 In this, we're talking about something is today's
26 definition and understanding, at least my understanding, of
27 the word "environmental organization." That does not qualify
28

1 in my judgment.

2 Whether my colleagues agree with me or not, I have
3 no idea. But that's the way I look upon it.

4 MS. DRAKE: Some of the other -- I'm sorry.
5 Obviously did not have any of the information available to
6 you.

7 Again, I sit -- or I am on the Water Quality
8 Board, the Los Angeles Region, which also is an environmental
9 protection agency.

10 And if you have not had any of my background, I
11 have -- I was a former City Council in the City of Ventura,
12 and basically began the recycling program within our city.
13 And I think that's one of the reasons why I'm very excited
14 and hopeful that I will continue to be a board member,
15 because of my years almost in the trenches in Ventura County,
16 because in 1888 and 1889 [sic], we went through many of the
17 problems that counties are now going through with different
18 committees. I sat on the Coast Swamp Committee, sat on a
19 Cool Heads Committee that basically tried to sift out
20 information and get information to people who were excited
21 about wanting to do something, not heading in the right
22 direction.

23 So, because of my experience in city government and
24 in, as you -- in on the Water Quality Board, and also on
25 Regional Sanitation, yes, I do believe that I meet the
26 category.

27 SENATOR CRAVEN: Were you responsible for setting
28

1 up the, did you say, the recycling system for the Ventura
2 City Council?

3 MS. DRAKE: For the City of Ventura, yes.

4 SENATOR CRAVEN: Do you think that was well
5 received by the people?

6 MS. DRAKE: They loved it.

7 SENATOR CRAVEN: They obviously --

8 MS. DRAKE: They do love it.

9 SENATOR CRAVEN: -- didn't love you when you ran
10 for office a second time, despite all your accomplishments on
11 their behalf, which they seemed to like so much.

12 MS. DRAKE: I think the recycling movement in the
13 city speaks for itself. I did begin the movement. Of
14 course, no one does anything all by itself, and I had a lot
15 of help.

16 And in the letters of information that you
17 received, even amongst the ones that are in opposition to me,
18 most of them do not argue my qualifications for the job.
19 What they argue is the category for which the Governor
20 selected me. And some of them even allude to the fact that
21 they wish the Governor would appoint me in one of the other
22 public slots.

23 So, I think I have a proven track record inn
24 environmental issues and in recycling within our community of
25 Ventura.

26 SENATOR CRAVEN: Californians Against Waste, which
27 has the subtitle of "Towards a Recycling Economy", they are
28

1 very much in opposition to your appointment, as well as the
2 Planning Conservation League.

3 I would tend to agree with what you said about the
4 other categories available for appointment by the Governor,
5 and think that perhaps you would have the qualifications
6 there that you do not, in my judgment, enjoy presently with
7 this one that we're discussing today.

8 CHAIRMAN ROBERTI: Senator Petris.

9 SENATOR PETRIS: I'm looking over the
10 correspondence here, and I don't think the issue is what your
11 judgments are and your track record in the environmental
12 field. There are several environmental organizations which
13 praise your track record with respect to environmental
14 issues, including recycling.

15 But the issue here seems to be the Governor's
16 inability to read the statute, or a deliberate skirting of
17 the statute accomplish whatever purpose.

18 The statute clearly calls for experience in a
19 particular kind of organization whose principal purpose is to
20 promote recycling, not one of many purposes.

21 Legislative Counsel raises a point also that a
22 public entity does not qualify for that classification of an
23 organization, nonprofit organization.

24 So, there's three or four holes in the category.
25 It's no reflection on you and your record. As you pointed
26 out, the Sierra Club, among others, indicates, with the
27 knowledge of the record that they've seen of you in that
28

1 field so far, they'd be happy to support you in the proper
2 category.

3 So, Mr. Chairman, I think we shouldn't lose a lot
4 of time on her background and qualifications because that's
5 not the issue. The issue is, does she fit into the specific
6 statutory category.

7 This is the second appointment in a row we've had
8 on this Board from the Governor that didn't fit the statute.
9 That troubles me. Maybe he can reappoint her in the other
10 category. She'd have a much better chance; even the
11 environmentalists think she has a good record.

12 I don't think we should go along with the Governor
13 -- I think Senator Craven is right -- when he's not
14 appointing a person to fit the particular category.

15 MS. DRAKE: May I respond to Senator Petris?

16 CHAIRMAN ROBERTI: You may.

17 MS. DRAKE: As I said earlier, I did accept this
18 appointment in good faith.

19 SENATOR PETRIS: We're not challenging that.

20 MS. DRAKE: Right.

21 SENATOR PETRIS: It's not fair to you for the
22 Governor to put you in that spot right there. He's done it
23 over and over and over again in a lot of appointments. It's
24 not fair. It's not fair to you.

25 Why should you come in here and defend what you've
26 done on your public record in environment? Nobody's
27 quarreling with that.
28

1 But you don't fit that particular category.
2 There's no way we can twist that. The statute is very clear.
3 We went through that with a prior appointment. It put us
4 through a lot of needless work, embarrassment. A good man
5 was in here on that occasion, too, but he didn't fit the
6 category.

7 And we're put in a position of trying to stick with
8 the law, even though it means turning down good people who
9 had a good track record that's impressive. I don't enjoy
10 making these comments to you. Do you see what I mean? We
11 have to stick with the statute.

12 I don't know why the Governor finds it so difficult
13 to read the Code.

14 MS. DRAKE: I think possibly there's some ambiguity
15 in the law.

16 SENATOR PETRIS: Let me tell you, the language of
17 that statute was worked out over a long period of time with a
18 lot of different groups.

19 MS. DRAKE: I was not privy to that.

20 SENATOR PETRIS: And they negotiated. Every single
21 word was carefully chosen.

22 And the question of whether a public entity
23 qualifies as an organization, nonprofit category, that's
24 devoted to this was clearly rejected. There is a separate
25 category for public entity, for having held some kind of
26 public office, as you did. That was specifically rejected
27 during the negotiations.
28

1 And now to come back and say, "Well, you might have
2 rejected it, but I'm going to put this person in anyway,"
3 it's not fair. It just isn't fair to you to put you in that
4 box. Do you see what I mean?

5 Why not appoint you in another slot where you don't
6 have that obstacle? Then we can just look at your record and
7 decide whether your record qualifies you to serve. That's a
8 different question.

9 SENATOR CRAVEN: Mr. Chairman, Senator Petris has
10 said basically what I feel.

11 I think we're all willing to stipulate the
12 environmental activity, if you want to categorize it as
13 such, that you've had heretofore, but we cannot -- I cannot,
14 in my own judgment -- apply that to subdivision (b) of
15 Section 40401. That's why I said that the other slots that
16 are available on that Board are ones that I think you would
17 be entitled to by virtue of background, experience, and so
18 forth, and without comment.

19 You see, I just think they put you in the wrong
20 slot, in my judgment.

21 You may say, "Well, why not? I have that
22 experience." But, as Senator Petris alluded to, there was an
23 agreement made, as I understood it, that we would have an
24 environmental organization in the purest, new sense of the
25 word "environmental", and those people representing those
26 that I mentioned, the Planning League and the Californians
27 Against Waste, they feel that what we are doing is violating
28

1 what they interpreted to be a promise by virtue of
2 legislation that they would get their person. And they don't
3 look upon you and your background to fit that slot.

4 They don't say that you're not capable of
5 fulfilling the other slots at all, and I don't think the
6 Members of this Committee do, either.

7 SENATOR BEVERLY: Mr. Chairman.

8 CHAIRMAN ROBERTI: Senator Beverly.

9 SENATOR BEVERLY: I'm not sure Senator Craven
10 speaks for all Members of the Committee.

11 As I read the opinion -- and I had not seen it
12 until this moment -- it turns on whether a governmental
13 entity, a governmental agency, can be a nonprofit
14 environmental protection organization.

15 Let's take an Air Pollution Control District.
16 Would you quarrel with that?

17 SENATOR PETRIS: I'd quarrel with that,
18 absolutely.

19 SENATOR BEVERLY: You would say it's not an
20 environmental protection agency?

21 SENATOR PETRIS: It's not principally devoted to
22 promoting recycling.

23 SENATOR BEVERLY: Ah, that's different.

24 SENATOR PETRIS: Well, that's what this is.

25 SENATOR BEVERLY: That's not the point you've been
26 turning on, or --

27 SENATOR PETRIS: First of all, it's not a nonprofit
28

1 organization.

2 A nonprofit organization is clearly defined. It's
3 not a governmental entity. No government organization is a
4 profit one.

5 SENATOR BEVERLY: True.

6 SENATOR PETRIS: You know, it's not intended to be.

7 SENATOR CRAVEN: I started my comments with a
8 recitation of that.

9 SENATOR BEVERLY: I think an Air Pollution Control
10 District is an environmental protection agency.

11 Now, if you want to go further and say she doesn't
12 qualify under the further definition, nobody has nor has
13 Counsel.

14 SENATOR CRAVEN: Counsel has disagreed. I disagree
15 with you.

16 SENATOR BEVERLY: He says a governmental
17 organization cannot be an environmental protection agency.

18 SENATOR CRAVEN: Counsel has said:

19 "Accordingly, it is our opinion
20 that the person in question is not
21 eligible for appointment to the
22 board pursuant to subdivision (b) of
23 Section 40401."

24 SENATOR BEVERLY: And in the explanation he says:

25 "We do not think that the term
26 'nonprofit environmental protection
27 organization,' as used --"
28

1 CHAIRMAN ROBERTI: On that point, I tend to agree
2 with Senator Beverly.

3 The nonprofit -- I don't agree with Counsel myself.
4 Nonprofit environmental protection organization, I think, can
5 be a governmental organization.

6 There may be a stronger point, in my mind, on
7 "promote recycling and the protection of air and water
8 quality." That may be tougher.

9 Maybe Ms. Drake can, for my edification, speak to
10 that point.

11 I tend to think if there now are so many nonprofit
12 governmental organizations that are set up to expend money
13 that's appropriated, that the drafters should have said,
14 "nonprofit environmental protection organization which is not
15 part of any governmental entity." That could have been
16 easily specified, because many of these organizations are
17 now, pursuant to legislation, they're set up in legislation.
18 We do it all the time.

19 I know in Los Angeles County, I'm sure as in
20 Ventura County, they do it all the time.

21 So, they should have specified, or maybe it was
22 just an error in not doing it, but the clear reading,
23 "nonprofit environmental protection organization that is not
24 a governmental established organization," or whatever, there
25 would have been a way to do it.

26 Now, in my mind the more difficult question,
27 because I don't know the charge of the Ventura Regional
28

1 Public Facilities Corporation, is that its principal purpose
2 is to promote recycling and the protection of air and water
3 quality.

4 Could you speak to that, Ms. Drake?

5 MS. DRAKE: Also, other agencies that I have sat on
6 previously also dealt with air quality and water quality.
7 The Los Angeles Regional Water Quality Board, of course, is
8 set up definitely for the regulation of landfills.

9 CHAIRMAN ROBERTI: Did you sit on that?

10 MS. DRAKE: Yes, I did.

11 And also the air quality issue, I sat on, again,
12 another Council committee. Basically it was the first one
13 that was started in the state that deals with traffic and air
14 emissions, and now the City of Ventura --

15 CHAIRMAN ROBERTI: Clarify again, what was the
16 first one you sat on?

17 MS. DRAKE: Regional Water Quality Board, Los
18 Angeles.

19 And also, the City of Ventura now has the highest
20 fee to build a single family residence in the State of
21 California. It's \$5280, and that money goes to -- for air
22 emissions, air quality.

23 So with that and -- I think the Regional Sanitation
24 District is basically an overall district. It basically has
25 to meet all of the needs of all the environmental issues
26 because, as everyone who sits here knows, the difficulties of
27 siting a landfill and operating a landfill, and you deal
28

1 daily, daily, with air quality, water quality. And, of
2 course, this agency was the only one who basically was --

3 CHAIRMAN ROBERTI: That was the Ventura County --

4 MS. DRAKE: Ventura Regional Sanitation District,
5 right.

6 SENATOR MELLO: Mr. Chairman.

7 CHAIRMAN ROBERTI: Senator Mello.

8 SENATOR MELLO: The fact that we're discussing this
9 interpretation of the Legislative Counsel's opinion, may I
10 ask that Mr. Tom Whelan, who drafted this, be called to come
11 down here? I think he made the interpretation here, and it
12 seems to be interpreted differently.

13 CHAIRMAN ROBERTI: Yes.

14 SENATOR MELLO: We can go on with the meeting.

15 CHAIRMAN ROBERTI: Why don't we continue with the
16 meeting. Sergeant or staff will call Leg. Counsel.

17 MS. DRAKE: May I just make one other comment?

18 CHAIRMAN ROBERTI: Yes, please.

19 MS. DRAKE: I did try to meet with as many
20 environmental organizations that have -- that are
21 headquartered here in Sacramento. I also dealt with some
22 organizations in Ventura County who were asked to go in
23 opposition of me, and they chose not to because of my record
24 on recycling and all of the activities that I have been
25 involved in, which mainly are in this area, because early on
26 it was an area of great interest to me.

27 In dealing with all of the organizations and
28

1 talking to them, I assured them that I understood exactly
2 what my appointment meant, and that I would truly be an open
3 line of communication with them, and also, hopefully, be a
4 direct line of communications so that they would know that
5 they could come to me on all issues with their comments, and
6 I would certainly listen to them. So, I have tried.

7 It's very difficult. I've not been in Sacramento,
8 a situation like this, before. It's very difficult during a
9 recess, not only to talk to someone. I'm very sorry about
10 Senator Mello [sic]. I was in San Diego, and I tried a
11 couple of times to -- and I talked to a couple of people in
12 your office. And everybody is doing their thing during
13 vacation, and I can understand that.

14 So, I want to apologize for any information that
15 the Senators do not have. I'm very sorry about that.

16 But I do believe that I have a well-rounded
17 background in environment, and I do understand what this
18 position means. And I did take it in good faith.

19 CHAIRMAN ROBERTI: Mr. Horton.

20 Mr. Horton is the supervising Deputy in issuing the
21 Counsel's opinion.

22 Mr. Horton, you've heard the debate.

23 MR. HORTON: Yes, Mr. Chairman, Members.

24 I'm Jack Horton, Chief Deputy Legislative Counsel.

25 I had an opportunity to review this opinion before
26 it was sent out of the office. It was our view that in this
27 context -- I don't have the opinion before me -- it was our
28

1 view that this in this context, references to nonprofit
2 environmental organizations referred to what you could
3 characterize as a private organization, not a public agency.

4 The materials that were referred to us referred to
5 the appointee's participation in a variety of public agency
6 boards, and it was our view that those particular boards
7 would not be viewed as a nonprofit organization within the
8 meaning of subdivision (b) of 40401.

9 MS. DRAKE: Did you have an opportunity to read the
10 articles of incorporation for the Ventura Regional Public
11 Facilities Corporation?

12 MR. HORTON: I don't believe that one was one that
13 was referred to us.

14 MS. MICHEL: That's being reviewed now.

15 SENATOR CRAVEN: What's what I read from earlier.

16 SENATOR BEVERLY: May I ask a question?

17 Counselor, would you say that a governmental agency
18 could never be an environmental protection agency within the
19 meaning, as that term would normally be defined?

20 You're saying that a governmental agency, under
21 this statute, cannot ever be an environmental protection
22 agency.

23 MR. HORTON: That's right.

24 SENATOR BEVERLY: Right across the board?

25 MR. HORTON: That's right.

26 SENATOR BEVERLY: In a given case, an Air Pollution
27 District might qualify?
28

1 MR. HORTON: That's right.

2 SENATOR BEVERLY: Then we're both right, I guess.

3 SENATOR CRAVEN: I think the point that Counsel
4 makes, certainly it reflects an attitude that I've had,
5 whether it's right or wrong. And when I read the statute,
6 40401, I have a tendency to think of a nonprofit
7 environmentally oriented and dedicated private organization.

8 Sure, you could be in a water quality control
9 operation. That's obviously environmentally oriented, but it
10 is not under the same context of what I have described prior.

11 SENATOR BEVERLY: What organizations would qualify
12 in the language of this statute?

13 SENATOR CRAVEN: Oh, I suppose the one that I read
14 the letter from, Californians Against Waste, "Towards a
15 Recycling Economy", they're one. And the Planning
16 Conservation League, I think, is another one, and
17 organizations of that type, in my judgment.

18 I think the more Ms. Drake says in defense of her
19 own position, the more she's indicating her, unconsciously,
20 her qualifications to fit into the other slot as opposed to
21 the one that she has been nominated for. That's my whole
22 point.

23 I think a rapprochement with the environmentalists
24 was one that was taken and reflected in the statute, and this
25 seems to be a deviation from that which is spelled out in the
26 statute, and that's my concern. Because if we promise
27 something to someone, and lead them to believe this is it,
28

1 put it in statute, and then pay no attention to it, I think
2 we're doing them a disservice.

3 MS. DRAKE: I think if I had a record other than a
4 strong environmental record, I could agree with you.

5 But I, in my interviews and in their opposition
6 letters, there really has -- there is nothing that they've
7 said against my performance or my understanding of what my
8 job would be, or the protection of the environment.

9 Unfortunately, I really think that the law left a
10 loophole, and I am caught in the middle of this because I
11 believe that I do meet the letter of the law, and that it
12 doesn't say private or public.

13 Other people have different opinions, and as
14 Chairman Roberti so aptly said, when you write a law, you're
15 going to get opinions.

16 I'm sitting here in good faith. I'm in your hands.
17 I know I can do a good job. Letters have said that, both
18 from opposition and from many people. And if you look at the
19 letters, again, you haven't seen them, but the support
20 letters, they are all people who I have worked with: Board of
21 Supervisors, City Managers. And all of these people were all
22 involved in organizations that I worked with them to improve
23 the environment. I've sat on committees as a board member,
24 as a chairman, but they did not have a nonprofit status.

25 All of the nonprofit groups that are involved in
26 the environment -- not all -- some of them sit on a
27 committee that I sat on which met monthly.
28

1 You know, I think I can understand the quandary
2 you're in with, you know, how to interpret the law. My
3 coming to you and talking to you is saying I see it a
4 different way, and that's a judgment, I guess, you have to
5 make.

6 I wouldn't be sitting here if I didn't think I was
7 qualified. And I sure wouldn't have spent a whole lot of
8 time up here if I was trying to fool somebody or circumvent a
9 law.

10 I took it in good faith, and that's all I can
11 really say to talk to it. I think I have the proper
12 credentials.

13 This law, I think, should possibly, if there is a
14 problem, then it should say "private" and not public, because
15 many of the agencies that are now established and will be
16 established are going to be dealing with the environment.

17 CHAIRMAN ROBERTI: Senator Torres.

18 SENATOR TORRES: Welcome to the Committee,
19 Ms. Drake.

20 I am not a Member of the Rules Committee, but
21 through the graciousness of the Members, chairmen and
22 chairpersons of various policy committees are allowed to ask
23 questions and to interview potential appointees in terms of
24 their jurisdiction.

25 You're now a member of the Los Angeles Regional
26 Water Quality Board; is that correct?

27 MS. DRAKE: Yes.
28

1 SENATOR TORRES: Do you plan to resign if your are
2 confirmed to this position?

3 MS. DRAKE: Yes. I think by statute I cannot hold
4 two positions.

5 SENATOR TORRES: I just wanted to make sure about
6 that.

7 Are you familiar with the Azuza landfill?

8 MS. DRAKE: Yes.

9 SENATOR TORRES: When you were first appointed to
10 the Regional Water Board in 1988, what was your recall, what
11 was your memory, on how you voted on the expansion of that
12 landfill?

13 MS. DRAKE: Affirmative.

14 SENATOR TORRES: It was affirmative.

15 MS. DRAKE: Yes.

16 SENATOR TORRES: In March of that year, the
17 Regional Board had turned down the request for the expansion,
18 and now in November, with you on the Board, expansion was
19 approved on a 4-3 vote. Why?

20 MS. DRAKE: Again, I wasn't there previously, but I
21 read all of the minutes and all of the information. And the
22 first time they came before the Board, I think they were
23 basically doing the minimum standards that they needed to do
24 to protect water quality there.

25 The second time they came before us, they took the
26 extra -- the extra steps, many extra steps, to ensure water
27 quality.
28

1 I, again, did not visit the site, but read through
2 all the material.

3 SENATOR TORRES: So, you believed the expansion was
4 safe when you approved it?

5 MS. DRAKE: Yes.

6 SENATOR TORRES: And you believed that the double
7 liner that was approved by you was all the protection that we
8 needed for the water supply in the San Gabriel Valley?

9 MS. DRAKE: It's an 80-millimeter HBTD with three
10 additional liners, with a clay cap, and they also have a
11 penetration system below the clay cap beyond where waters
12 could go.

13 I think that I remember this chart and pulled it,
14 and looking at this, this is a standard landfill, the
15 protections. These are all the additional protections. This
16 is the most protected landfill in California.

17 Landfills are not attractive --

18 SENATOR TORRES: Ms. Drake, let's get back to --

19 MS. DRAKE: -- to the eye, to the nose or whatever,
20 and I --

21 SENATOR TORRES: Let's get back to the specifics
22 here, and that is that when you approved the expansion of the
23 landfill, wasn't that decision by your board, by your vote,
24 appealed to the State Water Board?

25 MS. DRAKE: Yes, it was.

26 SENATOR TORRES: Did the State Water Board agree
27 with you that this site was a safe one, or did the State
28

1 Board say that the Regional Board had, quote, "make a
2 mistake" in approving the expansion?

3 MS. DRAKE: They upheld the decision.

4 SENATOR TORRES: They upheld the decision. They
5 never indicated to you that you made a mistake in approving
6 the expansion?

7 MS. DRAKE: No.

8 SENATOR TORRES: In fact, the State Board only
9 approved the expansion of the site when the project was
10 re-engineered, was it not, to include a third liner, which
11 you had not approved, to keep groundwater out of the
12 facility, and the posting of a \$20 million bond for future
13 clean-up?

14 MS. DRAKE: I believe that also came forward to the
15 Water Quality Board, the change, in their initial --

16 SENATOR TORRES: Well, I think you don't have your
17 facts straight, Ms. Drake, because the State Water Board made
18 specific reference that the expansion that was originally
19 approved, which you voted for, was not safe enough. And as a
20 result of that, the Board did say that the Regional Board had
21 made a mistake because the project had to be re-engineered to
22 include a third liner to keep groundwater out of the
23 facility, and the posting of a \$20 million bond before they
24 would approve your decision.

25 So, they didn't approve your decision just as you
26 approved when you voted for it. They reviewed it and
27 concluded that it wasn't safe enough, and based upon two
28

1 considerations, voted to re-engineer it and to post a \$20
2 million bond.

3 I don't think that's accepting your decision.

4 MS. DRAKE: I do not recall that they had to do
5 that, Senator Torres. I'm very sorry, but I -- when I voted
6 for the expansion of the landfill, I really had to think long
7 and hard about the decision.

8 My basic vote on it was that I was -- reading
9 through the material, I was convinced that it would be the
10 total protection that was needed to protect the water.

11 SENATOR TORRES: Well, it wasn't, Ms. Drake, and
12 the Water Board suggested that it was not, and did more than
13 just suggest that it was not. It said you've got to re-
14 engineer this project, and we're going to require you to post
15 a \$20 million bond to make sure that this thing is safe and
16 to make sure that this clean-up does start.

17 That was why it was appealed to the State Water
18 Board, and that's why the Water Board did not just merely
19 rubber-stamp your approval at the local level. It said that
20 approval wasn't enough, that we needed to do more.

21 You don't recall those facts at all?

22 MS. DRAKE: No, I'm sorry, I don't.

23 The bond issue may be in there, but the liner
24 issues, I thought they were brought to us fully.

25 SENATOR TORRES: Ms. Drake, many of us fought on
26 the Senate Floor regarding the establishment of this Board,
27 because many of us felt that maybe this wasn't the right way
28

1 to go, and that we wanted to have people -- and part of the
2 compromise and the fight on the Senate Floor was to deal with
3 who was going to serve on this Board.

4 I'm still unclear, quite frankly, as to whether we
5 legally decide you had involvement to comply with the law or
6 not. In my opinion, the spirit of the law, if not the rule
7 of the law, as been broken by this Governor and your
8 appointment to this Waste Board.

9 I don't think that you're the kind of person that
10 we had in mind -- and this is no personal reflection upon you
11 -- but I don't think you're the kind of person that Senator
12 Petris or I, when we fought on the Senate Floor during a very
13 heated debated, felt that you were the type of person -- not
14 you personally -- but you were the type of person that we
15 fought so hard as a compromise to finally accept and vote for
16 this proposal.

17 We felt that the environmental person who was going
18 to be appointed to this Board was going to be someone who
19 actually had those strong environmental credentials, and no
20 someone who happened to be a close friend of George
21 Deukmejian.

22 MS. DRAKE: Senator Torres, I am not -- I'm an
23 acquaintance of Governor Deukmejian and Gloria Deukmejian.
24 I'm certainly not a close friend. I didn't get invited to
25 the wedding; I don't know if you did.

26 I have not -- I've known them for 25 years. I have
27 not spoken to the Governor or Gloria in probably three years.
28

1 I know who they are because I'm from Long Beach.

2 But to say that I was appointed because I'm a
3 friend of his, I think, is absolutely untrue. And I
4 certainly wouldn't have taken this position if it was just a
5 friendly friendship type situation.

6 SENATOR TORRES: Ms. Drake, the issue here is not
7 whether you're a friend of George and Gloria's or not, and
8 whether you've known him, as you've so stated, 25 years.

9 MS. DRAKE: I didn't bring it up.

10 SENATOR TORRES: The issue here is whether or not
11 you're qualified to serve on this Board, and most importantly
12 of all, whether you were the type of person we envisioned on
13 the Senate Floor when we came to this compromise.

14 MS. DRAKE: I'm glad you agree that it's not an
15 issue.

16 SENATOR TORRES: The whole issue here is whether or
17 not we have people that represent varied views. And the
18 whole issue of the debate on the Floor of the Senate was that
19 we made a compromise to make sure that certain people were
20 going to be represented.

21 You do not fill, in my opinion, the person that I
22 fought to have represented on the Solid Waste Board. I do
23 not view you as an environmentalist, especially after your
24 vote on the Azuza landfill. I don't view you as an
25 environmentalist.

26 I think that's where I'm trying to let you know
27 honestly and openly as to where I'm coming from and how I
28

1 remember the debate on the Senate Floor.

2 I would prefer to have seen someone who has those
3 activist credentials, because that would have brought a sense
4 of debate and a sense of diversity on the Board that is so
5 essential to the future of California and our environment.

6 MS. DRAKE: I have an environmental record that I'm
7 very proud of, Senator Torres.

8 CHAIRMAN ROBERTI: Are there any other questions
9 from the Members?

10 Do you have any witnesses in support, Ms. Drake?

11 Please come up, Mr. Imbrecht.

12 MR. IMBRECHT: Mr. Chairman and Members, I think I
13 sense, perhaps, the direction things were headed, but I would
14 be remiss if I didn't at the same time indicate to you that I
15 have known Ann Drake for better than 15 years. She is a lady
16 of great personal integrity.

17 I think the mere fact that the Ventura County Star
18 Free Press, which endorsed, I believe, without exception
19 every Democratic candidate for constitutional office in the
20 last election as well as being the only daily in the state
21 that endorsed the adoption of Proposition 128 in an editorial
22 which, I believe, has been distributed to you, spoke quite
23 favorably of her nomination for this particular position.

24 I would also add that I believe in the packet of
25 support letters, that several of the quite prominent
26 Democratic members of the Ventura County Board of
27 Supervisors, who have in the past quarreled politically with
28

1 Ms. Drake, also wrote letters of support.

2 I am here today simply to indicate to you that
3 those of us from the Ventura community have a high regard for
4 her commitment to public service, her dedication to the
5 community.

6 I hope that whatever action you take today will be
7 reflective of what I think most people in our community
8 believe, and that is that she is, indeed, a very important
9 and valuable member of our citizenry in the sense of willing
10 to make a commitment to public service.

11 I think that Nan Drake is the kind of appointment
12 we need more of in state government. I'm not here to join
13 the issue that you are particularly debating, because that's
14 clearly a legal issue that you have to determine for
15 yourselves.

16 But nonetheless, I do feel that it would be less
17 than honest for me to not step forward and say that I think
18 she's a fine individual and is worthy of your support.

19 CHAIRMAN ROBERTI: Thank you, Mr. Imbrecht.

20 Is there any opposition?

21 MR. HART: Mr. Chairman, Members, Gordon Hart
22 representing Sierra Club, California.

23 We've been placed in an uncomfortable position by
24 Governor Deukmejian's actions, and I want to make clear that
25 the focus of my remarks and of our position is on
26 Deukmejian's actions and not on Nan Drake.

27 We have met with Nan Drake, and we are impressed
28

1 with her record on recycling issues in Ventura County. The
2 issue of the Azuza Canyon landfill was brought to our
3 attention after we had written our letter to you, and that
4 vote, of course, concerns us. But nevertheless, we believe
5 that her record on -- her record of leadership in recycling
6 issues in Ventura County is the type of record that would
7 not normally lead us to what is a very unusual posture for
8 our organization, which is to come to Senate Rules and oppose
9 an appointment. We do that very infrequently and only when
10 we have very strong feelings.

11 We have very strong feelings about this, because we
12 were one of the principal organizations and the initiators of
13 AB 939, and like Senator Torres, have a very, very different
14 understanding of what this position was supposed to be.

15 In light of the discussion today, I would like to
16 spend a small amount of time on our understanding of the
17 legislative intent, and we think that should bear some weight
18 because we were extremely involved in all of the negotiations
19 that resulted in the compromise.

20 The most contentious issue in the development of
21 939, which was one of the most important environmental bills
22 passed during the Deukmejian administration, was the
23 composition of the new Integrated Waste Management Board.
24 That was the stumbling block that, in the last three days of
25 session, almost led to there being no bill after two years of
26 work.

27 Governor Deukmejian insisted that there be a
28

1 representative, and that was the words that he put it in, a
2 representative of the solid waste industry on the Board. It
3 had been the position of the environmental community and of
4 the legislative leadership that was negotiating with the
5 Governor's Office that there be no special positions at all;
6 that they all be public members. That was our position.

7 However, when it became apparent that the Governor
8 would not sign a bill unless it had a representative of the
9 solid waste industry on it, the environmental community, in
10 conversations with the legislative leadership who were doing
11 the negotiations, said that would be okay as long as there
12 was also a representative of the environmental community. It
13 was crystal clear to everyone, the individuals who went --
14 who were in those long meetings, that this meant someone who
15 had had service in an environmental advocacy organization.

16 It is not easy to write this kind of language. I
17 was involved in giving significant comments on the drafting
18 of this particular language.

19 We think that it is the clearest expression of a
20 specific appointment that we can find anywhere in law. It
21 usually doesn't have this kind of specificity.

22 The principal purpose as we saw it in the
23 negotiations was that the Governor wanted to make sure that
24 there was someone on the Board who had the perspective of the
25 group that does so much advocacy in front of the Board, and
26 that is the solid waste industry. Likewise, we thought that
27 there should be someone who had the perspective of, who could
28

1 get under the skin of, who knew the way the decisions were
2 made of the other principal sector that advocates in front of
3 the Board, and that is the environmental community.

4 Clearly, that is not a governmental organization.
5 The purpose was to balance the perspectives of those who
6 advocate in front of the Board. Governmental agencies do not
7 advocate in front of the Board in a way that provides a
8 balance against the industry advocacies. That was the
9 purpose as we saw it.

10 I think that if you asked any of the staff members,
11 or the Legislators, Mr. Sher, et cetera, Ms. Vuich, they
12 would agree that was the purpose, and that it conforms with
13 what Mr. Torres says was his understanding.

14 We would certainly agree that Nan Drake does not
15 fit or even, frankly, come close to those credentials. The
16 area in which Ms. Drake has been active is the Ventura County
17 area. All of the environmental groups of the Ventura County
18 area are in agreement that Ms. Drake, despite her
19 acknowledged leadership on the narrow issue of recycling in
20 the area, and it's acknowledged, they agree that she does not
21 meet this qualification. They're the ones who should know
22 best. They're the ones who are active in the way that the
23 law imagined we would have, and they agree that she does not
24 have the kind of experience that was thought about in this.

25 As to the issue of the matter of the law, whether
26 or not a governmental agency fits, we think that if you look
27 at the legislative history and know that until the very last
28

1 week of the session there was a proposal to have a local
2 government representative on the Board, it was then taken out
3 in favor of having only the industry and the nonprofit, that
4 it becomes clear that in the minds of the drafters of the
5 legislation, a governmental representative was a separate
6 position from a nonprofit environmental organization
7 representative. They were going to provide for that in a
8 separate position and, at the end, decided not to.

9 Senate Rules, in what I think was an extremely
10 prudent move, decided to place a person with such experience
11 on in Wesley Chesboro. We would have no objection and would
12 support it if the Governor wanted to use one of his public
13 positions to put a local government representative on, which
14 is the best category, I think, that Ms. Drake would be a part
15 of.

16 Ms. Drake's last-minute desperate attempt to have
17 the Ventura nonprofit corporation serve as her
18 qualifications, I think, is unfortunate. It is part of the
19 very unfortunate position that she's been put in. She wants
20 to serve on this Board because she'd be a good member of it,
21 and she's trying to draw a -- grasp at desperate straws to
22 get on it.

23 What this corporation is is simply the Ventura
24 County Sanitation District, a governmental agency, with
25 another hat on, the way city councils put redevelopment
26 agency hats on when they do things, on which she served for
27 precisely one meeting. Its beginning, the formation of the
28

1 corporation, occurred at the last meeting that Ms. Drake
2 served. For one meeting she acted on the board of directors
3 of an organization whose purpose is to finance landfills.

4 Now, if that meets the spirit of the laws, it's
5 very patent that it does not.

6 As to the other organizations that she served on,
7 not one of them, if you buy the fact that governmental
8 agencies could be nonprofit organizations for the purposes of
9 the subdivision, not one of them is involved in all three of
10 the activities that are specified.

11 She indicates that there's some cumulative
12 experience from all of the organizations that she has, in
13 some way or another, been involved in: recycling, water
14 quality and air quality. But that's not what the law says.

15 The law says "an organization whose principal
16 purpose is." So, it would have to be a singular organization
17 that had been involved as a principal purpose in all three of
18 those activities.

19 That's not the case with the Sanitation District.
20 They're not involved in air quality. That's not the case
21 with the Regional Water Quality Board. They're not involved
22 in air quality. That's not the case with whatever traffic
23 organization she indicated, that she'd never talked about
24 before. They're not involved in recycling or solid waste.
25 And that's not the case with the nonprofit financing
26 organization. They're only involved in solid waste and, I
27 suppose, water quality from that perspective, but not
28

1 involved in recycling and not involved in air quality.

2 Ms. Drake doesn't meet the qualifications. She
3 wants to indicate that that technicality shouldn't matter,
4 because she's a pretty good vote on our issues.

5 Well, I wouldn't expect the solid waste industry to
6 stand up here and support the candidacy of someone who had
7 never been a member of that industry, but they were a city
8 council member and voted pretty well for our side.

9 It's the threshold issue of whether or not she
10 meets the qualifications that we are concerned with. Once we
11 determine that she met that threshold, we would then look at
12 the other things to see if we thought she would be a good
13 candidate for the position. Ms. Drake doesn't meet the
14 threshold.

15 The Governor has put her in the unfortunate
16 position of putting her very close to something she would
17 like to have very badly. He has two public positions, and we
18 would encourage the Senate Rules Committee to communicate to
19 Governor Deukmejian that he should use one of those two
20 positions, not for some patronage position to put a staff
21 member in at the last minute, but for someone who would do a
22 decent job, and that's Nan Drake. But she's not qualified
23 for this particular position.

24 CHAIRMAN ROBERTI: Senator Beverly.

25 SENATOR BEVERLY: Just further educate me.

26 Would an officer of the Sierra Club qualify for
27 this position?
28

1 MR. HART: I believe so, yes, and I think probably
2 40 or 50 other organizations in the state.

3 SENATOR BEVERLY: I don't have any quarrel with the
4 fact that you might be -- you are a nonprofit environmental
5 protection organization.

6 Is your principal purpose to promote recycling?

7 MR. HART: Our principal purpose is to promote
8 recycling, water and air quality, and other things.

9 SENATOR BEVERLY: And other things.

10 MR. HART: Yes.

11 SENATOR BEVERLY: It would be an argument, though,
12 I would suppose.

13 MR. HART: You could make an argument, I suppose.
14 I don't think that it would have anywhere near the force of
15 the argument about the organizations Ms. Drake has served on.

16 SENATOR BEVERLY: Do you disagree with Counsel,
17 that a governmental organization could not be a nonprofit?

18 MR. HART: No, I absolutely agree with Counsel,
19 that this did not contemplate in any way a governmental
20 organization.

21 But even if it did, I wanted to make the argument
22 it still wouldn't fit.

23 CHAIRMAN ROBERTI: Your point that she's served
24 only one day impresses me somewhat on the one committee.

25 However, your interpretation of the statute, I
26 don't, frankly, think the Sierra Club would qualify, because
27 the Sierra Club's principal purpose is not.
28

1 If we're narrowly construing the statute, the
2 Sierra Club's purpose is not to promote recycling and the
3 protection of water and air quality. That is among your many
4 purposes, being an organization of more generic background.
5 You'd have to be almost specifically devoted to that purpose
6 only, and that is promote recycling, protections of air and
7 water quality.

8 That being the case, I'm then to believe that only
9 one or two organizations in the State of California were
10 written into this statute. That was not my experience, at
11 least, that's not my recollection, that it was only intended
12 to isolate the appointment to one or two only.

13 That's how your interpretation strikes me. I don't
14 see how Sierra Club, or even many of the organizations on the
15 Planning and Conservation League, qualify under this. I
16 don't think that was anything that the Members had
17 contemplated, that rigid an interpretation.

18 MR. HART: I think you're right, that -- both in
19 saying that one extremely rigid interpretation would do that,
20 and that that was not what was contemplated.

21 But I do think that it is clear that that was --
22 that the flavor of organization contemplated was an
23 environmental advocacy organization, a private environmental
24 advocacy organization. That is the flavor that was
25 contemplated.

26 Secondly, that they had to be one that included at
27 least those three, and I am not going to quarrel with the
28

1 fact that is not necessarily the most "dot-the-i-cross-the-t"
2 literal interpretation of the statute, but that is certainly
3 an interpretation that one could have from reading the
4 statute, and that is the interpretation that I think would be
5 the fairest to have from having been a part of those
6 negotiations.

7 I don't particularly care of the Sierra Club isn't
8 one of them. That's not what -- I'm not here to advocate a
9 Sierra Club person.

10 CHAIRMAN ROBERTI: I'm just trying to say that
11 there could be a point where the interpretation is so literal
12 and so narrow that then we're to believe that the Legislature
13 intended to write in only one or two organizations. I don't
14 think that was the case.

15 MR. HART: Agreed, and I don't think the
16 interpretation I'm indicating is of that kind of narrow
17 flavor.

18 MR. MURRAY: Mr. Chair and Members, Senator Torres,
19 thank you for spending so much time on this issue.

20 Mark Murray with Californians Against Waste.

21 Regretfully, we must join the Sierra Club in
22 opposing this appointment by the Governor, and for the very
23 simple reason that, having thoughtfully reviewed Ms. Drake's
24 background, having talked to local officials in the Ventura
25 area, having talked to environmental representatives in the
26 Ventura area, we find that Ms. Drake meets neither the letter
27 or the spirit of the law.
28

1 As has been described here today in terms of what
2 is relatively clear of what legislative intent was. For
3 example, Californians Against Waste is a nonprofit
4 organization that does actually explicitly meet this
5 requirement. It wasn't the intent that Californians Against
6 Waste, or any one of the other half dozen organizations that
7 really focus on just those issues in California, that they be
8 the only pool of candidates that would be selected.

9 I think that, as has been articulated by Members of
10 this Committee, the intent was that this appointment should
11 come out of the nonprofit environmental community. And I
12 think that we all have a relatively good sense of what that
13 means. That doesn't mean an agency; that doesn't mean an
14 environmental protection agency. It means a nonprofit
15 environmental organization.

16 Maybe I've been in this too long, but I can clearly
17 see the difference.

18 I think that in terms of wrangling about the
19 specifics of the requirements maybe kind of misses the point.
20 I mean, if you look at this, the language in the statute,
21 it's probably -- I think that some would argue that this is a
22 point where the folks putting together this legislation went
23 off the deep end in terms of becoming a little too detailed,
24 a little too prescriptive in terms of what they're after.

25 But as Mr. Hart noted, this was a very specific and
26 explicitly negotiated element of the legislation. This
27 wasn't something that slipped by the Governor or the
28

1 Legislature. This is something that was explicitly agreed to
2 by the Governor, by the Members of the Legislature, and I
3 think that the intent is quite clear.

4 While I'm not sure that we would -- that we're
5 prepared to endorse Ms. Drake as one of the public members
6 for the Governor's appointment, clearly, I think, you know,
7 it's clear she doesn't -- our contention is that she doesn't
8 meet this criteria; that she hasn't demonstrated herself to
9 be a leader on environmental issues such that we might skirt
10 the issue, that we might turn the other cheek or bend the
11 rules a little bit to accommodate her.

12 Clearly, I think, there was an understanding of --
13 that this person should come from the environmental,
14 nonprofit environmental community, and Ms. Drake doesn't meet
15 that criteria.

16 I think that's all I have to say.

17 CHAIRMAN ROBERTI: Thank you, Mr. Murray.

18 Any questions? Anyone else in the audience who
19 chooses to testify on this?

20 Ms. Drake, you can rebut.

21 MS. DRAKE: The Ventura Regional Public Facilities
22 Corporation, again, I think you brought up one point that
23 there was just one meeting.

24 It's an organization that is -- does not have
25 regular meetings. They are called. But that's a very small
26 point.

27 Again, it's the interpretation of a law. I feel
28

1 like I'm caught. I feel a little like a pin ball here,
2 caught between not being part of the negotiations, again, not
3 doing a history of the letters and whatever.

4 I accepted the position. Many people were excited
5 and wrote letters backing my position.

6 It's up to you, I guess, to decide. I've put my
7 record on the line, and I'm proud of it.

8 I can understand the quandary that you're in with
9 the opposition from the environmental groups, but at the same
10 time, they feel that I'm a qualified person to be on this
11 Board. And I think when six people come together and vote, I
12 would hope that each person votes their conscience and not a
13 representative of any group. I hope to think that the person
14 who sits as the industry representative is only going to
15 represent the industry. I hope that I'm going to represent
16 all the voters in California, and I think I want 939 to work.
17 It has to work. We're in a trash crisis in California, and I
18 think I've had experience with putting the groups together
19 that are going to make it work.

20 It's going to be the local groups. It's going to
21 be the boards of supervisors and the cities, and I think
22 Ventura County is going to be one of the first ones that
23 meets the -- that complies.

24 I guess that's really all I can say. I think I
25 would do a good job on the Board, and I have a record to
26 prove it.

27 CHAIRMAN ROBERTI: Thank you very much, Ms. Drake.
28

1 On this appointment, failure to act, because of the
2 statute, means confirmation. We have to act.

3 MS. MICHEL: We have to act.

4 CHAIRMAN ROBERTI: What's the actual date?

5 MS. MICHEL: She would be automatically confirmed
6 by the first of January.

7 CHAIRMAN ROBERTI: The first of January, she is
8 automatically confirmed if we don't act.

9 If we do act, that action has to take place on the
10 Floor. If the Members want to act, then a motion would have
11 to be made now to move the nomination to the Floor.

12 It's a little bit of a reversal on how we normally
13 do things.

14 If Members choose not to act, that would mean
15 confirmation, unless we meet before January 1st, and who
16 knows? We may be back.

17 The Rules Committee will be back, but we're talking
18 about the Floor.

19 SENATOR MELLO: Mr. Chairman.

20 CHAIRMAN ROBERTI: So, that's where we are right
21 now, so I'm open to any advice.

22 SENATOR MELLO: Mr. Chairman, I'd like to try a
23 motion that we send her name to the Floor without a
24 recommendation so that we can act on the Floor, as we'd be
25 required to under the statute. But we send a message to the
26 Governor including the Legislative Counsel's opinion, stating
27 what the opinion indicates, that his selection of Ms. Drake,
28

1 apparently, and based on the opinion, does not comply with
2 the section of the statute that was adopted.

3 CHAIRMAN ROBERTI: Senator Mello is moving that the
4 confirmation be made to the Floor without recommendation.

5 SENATOR BEVERLY: Question.

6 CHAIRMAN ROBERTI: Senator Beverly.

7 SENATOR BEVERLY: If this motion fails, she takes
8 the office; is that correct?

9 CHAIRMAN ROBERTI: If no motion passes out of
10 Committee, then she would take the office, unless, of course,
11 someone on the Floor tomorrow wanted to remove her from
12 Rules, which normally doesn't happen.

13 SENATOR PETRIS: You're clear in your mind that
14 Committee action alone would not be adequate?

15 MS. MICHEL: Correct.

16 SENATOR PETRIS: We have to go to the Floor.

17 In that case, I'd like to offer a substitute motion
18 that we send it to the Floor with the recommendation that the
19 appointment be rejected on the grounds that the person is not
20 eligible under the statute.

21 CHAIRMAN ROBERTI: I tend to think that's
22 essentially what Senator Mello --

23 SENATOR MELLO: What I was trying --

24 SENATOR PETRIS: Officially no recommendation, you
25 know --

26 CHAIRMAN ROBERTI: Senator Petris is moving with
27 the recommendation not to confirm.
28

1 SENATOR MELLO: Let me explain the intent of my
2 motion.

3 I think your motion -- what I was trying to do was
4 give the Governor a message stating that we were not just
5 arbitrarily making a decision, but we're acting out of the
6 Legislative Counsel, and perhaps he would have until
7 tomorrow, then, to withdraw her name if he saw fit or not
8 withdraw.

9 SENATOR PETRIS: I would incorporate those portions
10 of your motion into mine. Mine is more specific.

11 SENATOR MELLO: Then I withdraw my motion.

12 CHAIRMAN ROBERTI: Senator Mello has withdrawn his
13 motion, so we will take as the original motion Senator
14 Petris', that the nomination be sent to the Floor with
15 negative recommendation.

16 SENATOR MELLO: He's adding also, Mr. Chairman, if
17 I can ask Senator Petris, you're also adding my part --

18 SENATOR PETRIS: Yes, yes. I thought it would be
19 amended.

20 CHAIRMAN ROBERTI: With the letter to the Governor
21 that the Rules Committee has so recommended because --

22 SENATOR PETRIS: With a copy of Counsel's opinion.

23 CHAIRMAN ROBERTI: -- Ms. Drake's confirmation does
24 not comply with Section 40401 of the Public Resources Code,
25 with a copy of the Counsel's opinion. That is the motion.

26 On the question, on Mr. Gallagher, what was the law
27 on that?
28

1 MS. MICHEL: Ninety days. If there had been time
2 in between, Ms. Drake would also have 90 days, but there is
3 the stipulation that if we have not, if the Senate has not
4 acted, then effective January 1st, 1991, she is automatically
5 confirmed.

6 CHAIRMAN ROBERTI: Was that the same stipulation on
7 Gallagher?

8 MS. MICHEL: He would have run out of time.

9 CHAIRMAN ROBERTI: On the first appointment --

10 MS. MICHEL: Ninety days, then the Governor had 20
11 days to get us a second name, which within that timeframe he
12 did.

13 CHAIRMAN ROBERTI: The automatic confirmation only
14 takes place on the second?

15 MS. MICHEL: On the second, yes, sir.

16 CHAIRMAN ROBERTI: Well, there is a motion before
17 us from Senator Petris to send the nomination to the Floor
18 with a negative recommendation.

19 Secretary will call the roll.

20 SECRETARY WEBB: Senator Beverly.

21 SENATOR BEVERLY: No.

22 SECRETARY WEBB: Senator Mello.

23 SENATOR MELLO: Aye.

24 SECRETARY WEBB: Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Senator Craven.

27 SENATOR CRAVEN: Aye.
28

1 SECRETARY WEBB: Senator Roberti.

2 CHAIRMAN ROBERTI: No.

3 The vote is three to two; the motion carries.

4 [Thereupon a brief recess was taken.]

5 CHAIRMAN ROBERTI: The Committee will come to
6 order.

7 We will take up the nomination of Ms. Johnson, then
8 we're going to take up three items to accommodate our
9 consultant.

10 This is the nomination of S. Susan Johnson, Member
11 of the Board of Regents of the University of California.

12 Senator Presley is here to introduce the nominee.

13 SENATOR PRESLEY: Mr. President and Members, it's
14 my pleasure to be here and introduce to you a person who, I
15 think, is extremely well qualified to be a Regent of the
16 University of California.

17 She is a graduate of the system. She has spent
18 numerous amounts of time and resources in supporting the
19 University of California system prior to her being appointed
20 as a Regent. She has served an Alumni Regent, so it's
21 arguable that she's experienced.

22 Knowing her as I do, she's a person that just
23 absolutely loves this University system. She's very, very
24 conscientious. I think she'll just do an outstanding job,
25 and it's my real pleasure to commend her to you.

26 CHAIRMAN ROBERTI: Thank you very much, Senator.

27 Mr. Ochoa is here.
28

1 MR. OCHOA: Yes, Mr. Chairman.

2 I'm Ralph Ochoa. I am currently the Alumni Regent
3 representing UCLA on the Board, the alumni there.

4 I've had a chance recently to be working with Sue
5 Johnson on the Board of Regents, and it's my pleasure to be
6 able to share with you the fact that in my personal opinion,
7 she brings an awful lot of experience and character to the
8 Board of Regents, and I would hope that you very favorably
9 consider her nomination.

10 CHAIRMAN ROBERTI: Thank you very much, Mr. Ochoa.

11 Ms. Johnson, we'll ask you why you feel you're
12 qualified to assume this position?

13 MS. JOHNSON: Thank you, Senator.

14 As Senator Presley has indicated, I have had a
15 rewarding relationship with the University in a variety of
16 capacities over almost three decades: first as a student,
17 and then with the alumni, on the Board of Trustees, and
18 certainly enjoyed the time on the Board of Regents.

19 I was the first Chair of the founding group of the
20 University in Riverside, the first woman to serve as Chair,
21 and have worked hard on projects and scholarships, and
22 generally projects to move the University forward and in the
23 arts and culture have extensive Board experience.

24 CHAIRMAN ROBERTI: Very good.

25 Are there any questions of Ms. Johnson?

26 Is there any opposition in the audience?

27 SENATOR MELLO: Move the nomination.
28

1 CHAIRMAN ROBERTI: Senator Mello moves that the
2 nomination be recommended to the Floor.

3 SENATOR BEVERLY: Mr. Chairman, I note that
4 Assemblyman Kelley as well is supporting the appointment.

5 CHAIRMAN ROBERTI: Yes, Assemblyman Kelley also
6 will be noted in the record.

7 Well, Ms. Johnson, I think you're going to get off
8 easy on this.

9 SENATOR CRAVEN: How is she on recycling?

10 [Laughter.]

11 CHAIRMAN ROBERTI: Sometimes the University is the
12 hot potato, but today it's not.

13 Secretary will call the roll on Senator Mello's
14 motion.

15 SECRETARY WEBB: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Senator Mello.

18 SENATOR MELLO: Aye.

19 SECRETARY WEBB: Senator Petris.

20 SENATOR PETRIS: Aye.

21 SECRETARY WEBB: Senator Craven.

22 SENATOR CRAVEN: Aye.

23 SECRETARY WEBB: Senator Roberti.

24 CHAIRMAN ROBERTI: Aye.

25 The vote is five to zero; confirmation is
26 recommended to the Floor.

27 Congratulations.
28

1 [Thereupon the Rules Committee
2 acted upon legislative agenda
3 items.]

4 CHAIRMAN ROBERTI: The next item, returning to
5 Governor's Appointees, Alice J. Gonzales, Member of the Board
6 of Regents of the University of California.

7 MR. VELLANOWETH: Senator Roberti, Members of the
8 Senate, ladies and gentlemen, my name is Roberto Vellanoweth.
9 I am the state representative of LULAC, the League of United
10 Latin American Citizens, which is the oldest Hispanic
11 organization in the nation.

12 I'm here representing LULAC and the Hispanic
13 Chamber of Commerce of Sacramento, and it's an honor for me
14 to introduce to you a lady that has been with the Hispanic
15 community many, many years in Sacramento specifically. She
16 came to us as the Director of the Department of Aging.
17 Subsequently, she was appointed to the Employment Development
18 Department as the Director, and is currently here to be
19 confirmed, hopefully, for the position of the Board of
20 Regents for the University of California system.

21 Today's Sacramento Bee highlighted the many years
22 and the historical events that have occurred in her life that
23 have brought her here. She has earned a Ph.D. in history on
24 the streets, basically. She has earned her wings, and we're
25 here to support those wings of history for Alice Gonzales for
26 the Board of Regents.

27 Thank you very much.
28

1 CHAIRMAN ROBERTI: Thank you very much.

2 MR. ORTA: Mr. Chairman and Members of the
3 Committee, my name is Jesse Orta. I am past Chairman of the
4 American G.I. Forum, past Commander of the Veterans of
5 Foreign Wars, and I am currently the Commander of the
6 Veterans Affiliated Council.

7 It is my pleasure also to introduce the appointee,
8 Alicia Gonzales, and to recommend her to you for support in
9 the appointment.

10 Our organizations, I think it's no secret the
11 phenomenon of the aging veteran population. The State of
12 California has more veterans than any other state in this
13 country. Members of our organization have participated and
14 worked not only with Ms. Gonzales, but also with members of
15 her staff while at the Department of Aging.

16 We have been very encouraged and, in fact, very
17 impressed by her even-handed advocacy, by her leadership, and
18 her ability to try to advocate on behalf of the people, I
19 think, fairly.

20 We believe that she will make a very positive
21 representative on the Board of Regents for the University of
22 California, and we think that she'll really represent all of
23 the people of the state.

24 CHAIRMAN ROBERTI: Thank you.

25 Ms. Gonzales, we'll let you testify now as to why
26 you feel you're qualified to assume this position.

27 MS. GONZALES: Thank you, Mr. Chairman, Senator
28

1 Mello, Senator Beverly, Senator Petris, and Senator Craven.

2 First of all, I must tell you how truly honored I
3 am to have been selected to serve on such a prestigious
4 board. And as my opening statement and in response to why do
5 I think I fit the Regents and the qualifications, let me
6 share with you the Regents bylaws. Section 5.1 (d),
7 Composition of the Regents, reads:

8 "Regents shall be able persons
9 broadly reflective of economic,
10 cultural and social diversity of the
11 state, including ethnic minorities
12 and women."

13 I believe that description fits me.

14 If you will allow me, I have an opening statement
15 that I would like to put before the Committee.

16 I will approach this new responsibility, this new
17 position that I have been asked to take and I have agreed to
18 assume, in the very same manner that I have undertaken
19 responsibility all of my life, with my work, with my family.

20 I have now dedicated 20 years to public service,
21 and I have always given it my best. Have set high standards
22 for myself and for others.

23 I believe that I am a very deliberate planner, very
24 thoughtful and sensitive to the effects and the outcomes of
25 any of my decisions. I do my homework, looking at all facts
26 carefully, and many times I'm the one who asks the hard
27 questions, if they're not already being asked.
28

1 I'm a good listener. I think this morning the Bee
2 quoted me correctly in saying that, "From listening comes
3 wisdom. From speaking comes repentance."

4 CHAIRMAN ROBERTI: We can all use that.

5 MS. GONZALES: I will continue to be the champion,
6 the advocate of those in greatest need, and in most cases
7 those have been minorities and the poor.

8 Again, I want to state that I am truly honored and
9 enthusiastic about this opportunity to continue my volunteer
10 work in the support of my community, with my commitment to
11 the community, and in this case, to the people of the State
12 of California. I soon will have the time, and I've always
13 had the energy and interest.

14 I also want to share with you that I come to this
15 Committee with the full support of the new Governor-elect and
16 his blessings.

17 With that, I want to thank you for listening to my
18 statement, and I'm prepared to answer your questions.

19 CHAIRMAN ROBERTI: Thank you very much,
20 Ms. Gonzales.

21 Are there any questions? Senator Mello.

22 SENATOR MELLO: I don't have any questions.

23 I just want to add my fine words to my association
24 with Alice Gonzales, especially when she was Director of the
25 Department on Aging. She's a very compassionate person,
26 works hard, and I know that she will do the right thing on
27 the Board of Regents.
28

1 In my discussion with her, I felt that the Hispanic
2 community is under-represented in our universities. It's not
3 the fault entirely of the universities, but I think our whole
4 school system doesn't really encourage the kind of upward
5 mobility that is needed to make sure they're at the starting
6 line and they can fulfill their dreams for being college
7 graduates.

8 So, I know she's going to fight for their ability
9 to participate and to get a college education.

10 I'm just happy to join with others here in
11 supporting her for this position.

12 MS. GONZALES: Thank you, Senator.

13 CHAIRMAN ROBERTI: Senator Petris.

14 SENATOR PETRIS: I'd like to inquire.

15 A new person on the Board as majestic as that
16 undoubtedly has some priorities. I wonder if you could share
17 what your priorities might be, any aspect of the Regents'
18 jurisdiction, including under-represented minorities at all
19 levels, not just among students, but faculty and clerical
20 help, and all the way up and down the line.

21 MS. GONZALES: Senator, I have taken some time from
22 the day that I was asked to serve to look at some of the
23 issues and problems that have been raised, not only in
24 newspapers, because you can't always tell from reading an
25 article in the paper, you don't hear both sides of an issue.
26 But I have become aware of some of the legislation that was
27 introduced last year by advocates of minority students and on
28

1 behalf of the transfer students from community colleges to
2 the universities.

3 As for employment, I think that I will look at the
4 equity of the employment in the universities and what those
5 may be, if they are inequitable.

6 I believe that the UC system probably has the same
7 kind of system that we have in civil service with state, and
8 that it's very difficult to enter into the system, even if
9 you want to. And unless those criteria are changed so that
10 it does allow other minority persons into the system, we
11 won't get them in.

12 So, I hope that I can address that as I have tried
13 to address it as I served here to the civil service and the
14 changes that I believe have to take place if we are going to
15 allow other persons into the system.

16 Minorities in particular, I know it has been a
17 concern of state government -- yours, mine, and the
18 Governor's -- that there are not enough Hispanics in state
19 service. But unless we do something about changing the
20 system and the policy of that system, we're not going to
21 achieve that parity, either.

22 SENATOR PETRIS: How did you make out in the
23 Department of Aging in that respect? Are you up to quota
24 there?

25 MS. GONZALES: No, sir, I don't believe that that
26 Department is. I don't know exactly what the numbers are at
27 this point.
28

1 There was always the concern about the number of
2 minority persons, particularly of Hispanic background, in the
3 Department of Aging. The Department of Aging is a very small
4 department with very little movement. So, if one Hispanic
5 leaves or enters that department system, the percentages are
6 skewed or changed dramatically.

7 SENATOR PETRIS: How many employees are there?

8 MS. GONZALES: Maybe close to 200 now, sir.

9 But there's very little upward mobility there, or
10 very little change in that staff. And every time I tried to
11 recruit other Hispanics, men or women, we fight for them, you
12 now. Departments are always at odds with one another trying
13 to recruit the Hispanics from one another's department
14 because that's the only way you get them in, is if it's a
15 transfer or from within the system.

16 SENATOR PETRIS: Thank you.

17 SENATOR CRAVEN: May I ask a question.

18 CHAIRMAN ROBERTI: Yes, Senator Craven.

19 SENATOR CRAVEN: The problem the availability of
20 the Hispanic persons?

21 MS. GONZALES: No, sir; no, sir.

22 SENATOR CRAVEN: What is it?

23 MS. GONZALES: Getting into the system is the
24 problem. I could give you several examples of young
25 Hispanics who have come out of the university system with a
26 Master's, a B.A., a Ph.D., who can't get into the system.
27 They can apply and they can apply, and when you have
28

1 openings, they are from within the system. They're
2 promotional.

3 So, a young Hispanic does not enter the system
4 because they cannot enter as a CEA I or II or III. They have
5 to enter at a lower level, and they're not going to
6 jeopardize, you know, 10-15 years of their lives to get to
7 the level that their education demands.

8 SENATOR CRAVEN: Are you saying to me that someone
9 whose name is Patrick O'Brien can avoid that and just go in?

10 MS. GONZALES: No, no. It applies to everyone. To
11 get into the system is the issue.

12 And a lot of young people, without a real formal
13 education, do get in, but they get in as clerical, and OA
14 IIs, which is office technicians, at the bottom and the entry
15 level because of the positions that do become available.

16 But I'm saying that if you have a Hispanic who
17 wants to achieve greater input into the system, they're not
18 going to enter at that level. They're going to go into the
19 private sector, and they do.

20 SENATOR CRAVEN: That's because of the rather small
21 number of people employed by the unit to which you have
22 referred?

23 MS. GONZALES: That unit and in the state system,
24 sir. It applies to all of them.

25 CHAIRMAN ROBERTI: Senator Petris.

26 SENATOR PETRIS: If I may go back to that, I've
27 asked the same questions of President Gardner in our budget
28

1 hearings. I've carried legislation on that for Cal. State
2 and couldn't make it apply to UC, to take some vigorous
3 action to improve in that area.

4 The President suggests to us that they can't find
5 enough people. So, maybe if you know of an abundance of
6 candidates, I'd suggest you forward those names to the
7 President.

8 MS. GONZALES: I certainly will.

9 SENATOR PETRIS: If you have a bunch of Ph.D.s out
10 there that are eligible for positions on the faculty, I
11 think as a Regent, especially, you might want to forward that
12 information to him.

13 MS. GONZALES: I'll try two relatives real quick, a
14 Ph.D. and a Master's.

15 CHAIRMAN ROBERTI: Is there any opposition in the
16 audience?

17 Do I hear a motion?

18 SENATOR CRAVEN: Move.

19 CHAIRMAN ROBERTI: Senator Craven moves
20 confirmation be recommended to the Floor.

21 Secretary will call the roll.

22 SECRETARY WEBB: Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Senator Petris.

27 SENATOR PETRIS: Aye.
28

1 SECRETARY WEBB: Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote is five to zero; confirmation is
6 recommended to the Floor.

7 I forget to read into the record that Assemblywoman
8 Speier as well wrote a letter of recommendation, which I had
9 before me at the time.

10 We have before us the appointments of Arthur J.
11 Costamagna, Commissioner of the Workers' Compensation Appeals
12 Board, and Diana Marshall, Commissioner, Workers'
13 Compensation Appeals Board.

14 Both have been heard at great length I don't know
15 how many times, but a couple times at least. They have both
16 brought witnesses.

17 Why don't we hear the witnesses. Oh, just
18 Mr. Costamagna has brought witnesses, okay.

19 Why don't you come forward, then. Mr. Costamagna,
20 you might as well come forward, too.

21 Mr. Costamagna did testify. Please indicate your
22 name.

23 MR. SWEZEY: I'm Charles Lawrence Swezey. I'm a
24 former member of the Appeals Board and author of California
25 Workers' Compensation Practice.

26 I felt constrained to come here today to clarify
27 the record with regard to certain charges that have been made
28

1 against Commissioner Costamagna at the hearing -- at your
2 last hearing.

3 In my view, these charges were not only untrue, but
4 were unconscionable because the person reported to have made
5 them knew, or should have known, better.

6 It was said that Commissioner Costamagna was not
7 compassionate. Nothing could be further from the truth, and
8 two examples will suffice to demonstrate this.

9 You already heard about the untold hours that he
10 has spent helping the youth of San Francisco through the
11 Salesian Boys Club. I won't repeat the details of that, but
12 I would like to share with you an incident when I was on the
13 Board. Commissioner Costamagna was solicited by a homeless
14 family on his way to work one morning. He did not pass by on
15 the other side, as many of us do every day, nor did he
16 content himself with merely handing them a couple of dollars.
17 He actually spent three days finding aid, housing and
18 employment for this family. Now, most of us thought he was
19 wasting his time, but he was being compassionate, if that's
20 -- if my understanding of the word is that's what it means.

21 It is also charged that when he served on the WCAB
22 from 1970 to 1979, that he voted consistently on the
23 conservative side.

24 I served in the workers' compensation field for
25 over 30 years, and I must confess that I really don't know
26 what liberal and conservative mean when applied to referees
27 and commissioners. Somebody once told me that a liberal
28

1 judge was one who was liberal with other people's money.

2 But be that as it may, if the charge is that
3 Commissioner Costamagna always voted against the injured
4 worker, it is clearly unfounded. He gave you the statistics
5 last time with regard to the en banc decisions, and I'm
6 certain that a search of the panel decisions in which he
7 participated with appointees of Governor Jerry Brown,
8 including myself -- well, I guess I wasn't appointed at that
9 time -- would show that a majority of the decisions were
10 unanimous.

11 Because we participate in about 10 panel decisions
12 a day, most are forgotten, but I vividly remember one case in
13 which Commissioner Levy and I ruled against an injured worker
14 on the issue of apportionment. Commissioner Costamagna
15 dissented and wrote his now-famous "Scylla and Charybdis"
16 opinion, in which he narrowly limited the grounds on which he
17 would deprive an injured worker of disability because of a
18 pre-existing condition. It was hardly a conservative
19 position if conservative means pro-employer.

20 Now, in conclusion, I would like to urge
21 Commissioner Costamagna's confirmation for an extremely
22 important reason. I read that Senator Bill Greene spoke in
23 support of Commissioner Marshall, and this brings to my mind
24 the importance of having people on the Board who're capable
25 of successfully implementing the Margolin-Bill Greene reform
26 bill.

27 It's an unfortunate truth that many of the members
28

1 of the Board and of the administrative director's staff are
2 relative newcomers in the field. Not knowing the mistakes
3 which we made in the past, they are very likely to repeat
4 them.

5 With his 20 years of experience in the field, and
6 nearly 10 years of service on the Board, I think that
7 Commissioner Costamagna can prevent history from repeating
8 itself in a manner which would be detrimental to the success
9 of the reform act.

10 Thank you.

11 CHAIRMAN ROBERTI: Thank you.

12 I'm open to suggestions from the Committee. My own
13 personal inclination, unfortunately, is not to take a vote
14 today and see if something can be negotiated with the new
15 Governor.

16 There is one problem which labor has with these
17 appointments, and that is the failure of a labor person to be
18 on the Board.

19 Mr. Costamagna, if you'd like to speak to that.

20 MR. COSTAMAGNA: I understand that. I'm very
21 sympathetic to that. That's one reason why former
22 Commissioner Al Boardman was here with me last time, because
23 I served nine years with Commissioner Boardman, and he was an
24 outstanding Commissioners, an outstanding representative of
25 labor. He was a former head of the Operating Engineers, as
26 you probably know.

27 And I think it is unfortunate that there has not
28

1 been a labor man on that Board in recent years, or a labor
2 representative, man or woman.

3 So, I am very keen to that point of view and have
4 no other thoughts.

5 CHAIRMAN ROBERTI: However, that, I would say, is a
6 major problem. I don't want to represent it's the only
7 problem, but I tend to think everything else would evaporate,
8 my feeling of it.

9 In Mr. Costamagna's case, there has been some
10 concern about past votes.

11 SENATOR CRAVEN: Some of that has been dispelled by
12 the testimony.

13 It just seems something that veers away from what I
14 would call another side of equity, when you take a person who
15 has performed well, diligently, sincerely, and more than a
16 modicum of compassion, and do not confirm them just because
17 there isn't somebody from a particular profession or
18 occupational pursuit.

19 I guess there has to be a beginning sometime, but
20 presumably it would be best done with a new resignation or a
21 term limit that's up, after these people, who have served so
22 diligently, are confirmed into office.

23 CHAIRMAN ROBERTI: Thank you, Senator.

24 MR. SWEZEY: Mr. Chairman, I might mention --

25 CHAIRMAN ROBERTI: Ms. Marshall, if you want, come
26 join us. I don't know how many questions we'll have.

27 MR. SWEZEY: -- that these two positions that are
28

1 before you are lawyer positions, and usually the -- well,
2 always in the past, the labor member has been one of the two
3 lay positions. I don't know what the status of those is
4 right now.

5 CHAIRMAN ROBERTI: When are the two lay positions
6 up, or who holds those positions?

7 MR. SWEZEY: Oh, you just confirmed one for six
8 years at your last session, so that takes care of that.

9 MS. MICHEL: Mr. Margosian and Mr. Sullivan.

10 CHAIRMAN ROBERTI: Mr. Sullivan is the next one.

11 MS. MICHEL: Right. His term expires in November
12 of '92.

13 MR. COSTAMAGNA: I cannot speak for Mr. Sullivan,
14 but he has indicated that he is planning to leave sooner,
15 sometime next year. People's plans do change, but that, as I
16 understand it, was his current intention.

17 SENATOR MELLO: Mr. chairman, I'd just like to make
18 a comment.

19 I think I voted against almost all of the Workers'
20 Comp. appointees mainly because we really have a problem
21 there. This Governor has refused to come to grips with it.
22 Mr. Rinaldi, who runs the Department, is bent on dismantling
23 the whole workers' comp. program.

24 The only way we're going to get a change, we've got
25 a new Governor now, and I just hope he appoints somebody
26 that's going to want to follow the law and have some
27 compassion for the injured worker.
28

1 My office gets calls -- just a minute, sir. If you
2 don't mind, I'd like to say a few words here. My office gets
3 calls from people who are injured, and they come out of the
4 hospital, and suddenly there's an attachment against their
5 home. And the whole process takes so long.

6 We've had testimony here in the past that the mail,
7 in these regional offices, have been measured in the past by
8 the foot. They got up to 270 or 290 feet, and now they're
9 measuring it by the -- I don't know what the next unit of
10 measurement is, room or something like that. It's much
11 larger. There are judges that have to go in and open the
12 mail, look through boxes of mail to try to find the
13 applicant's case so they can try to pass judgment on it.

14 It takes them so long to get adjudicated, get their
15 case handled.

16 The other thing, from the employers' side, we have
17 the highest rates in the whole nation and the lowest
18 benefits. There's something wrong with the system. Just
19 keeping the same philosophy there is just going to make it
20 worse.

21 I think if these two nominees are confirmed here by
22 the Senate, it means that what we have today is going to go
23 on for many, many more years. I'm unwilling to do that. I
24 want to see some changes made. I want to see the law operate
25 towards the injured workers and not towards the mess that
26 it's in right now from an administrative point of view.

27 SENATOR CRAVEN: Henry, may I ask a question?
28

1 Henry, are the people who are the workers, if you
2 will, in the system, such as Mr. Costamagna and others, is
3 the logistical problem to which you refer, with which we are
4 all familiar, his fault in your judgment, or the fault of the
5 Director of the Department?

6 SENATOR MELLO: It's not so much fiscal, Senator
7 Craven.

8 We have, thanks to Senator Bill Greene and our
9 subcommittee that handles the budget, provided enough funds
10 for judicial appointments. They use administrative law
11 judges. Each judge requires a team, three to four people,
12 clerical, in order to handle their cases.

13 I've asked this question time and time again and
14 looked into it, because I've been concerned about this
15 system. They have not filled, in fact, sometimes they go in
16 and fill five or ten judge positions, but there's been as
17 high as 25 -- there might be people in the audience that
18 would know the figures better than I do -- there've been as
19 high as 25 unfilled judge positions. There's been as high as
20 100 clerical positions unfilled.

21 I think what the administration has said, pretty
22 much repeatedly, the Governor's said this at times, is that
23 they want to see reforms made in the system, reforms made,
24 before they go ahead and try to get the system to work. So,
25 I think their philosophy is, let it come down to its knees,
26 and come down to ruination, then try to pick it up from the
27 ashes and try to build something.

1 I don't know how long. An injured worker can't
2 wait that long. I've known them that have lost their homes;
3 they've lost -- there's not adequate retraining programs to
4 rehabilitate them and get them back into employment. The
5 system is just bogged down.

6 To answer your question, no, it hasn't been fiscal.

7 SENATOR CRAVEN: I didn't say fiscal. I said
8 logistical problem.

9 SENATOR MELLO: Well, logistical, it's been like I
10 said before, you know, you can blame the quarterback, but you
11 have to blame the chairman of the board, and that is in this
12 case the Governor of the State of California, because
13 Mr. Rinaldi will take his orders from the Governor. If he's
14 not pleasing the Governor, he would be removed from that
15 position.

16 SENATOR CRAVEN: Yes, but if you did not appoint
17 these people and chose instead someone from the labor side,
18 just hypothetically, how will that rectify or improve or
19 accelerate the work effort beyond what has been done
20 heretofore, when the basic situation is one involving a
21 fiscal situation?

22 SENATOR MELLO: It involves fiscal, but I think the
23 people who sit on the Board are part of the system. They're
24 trying to get the program to work, be responsive. Who should
25 they be responsive to? Injured workers?

26 If you read the preamble of the Industrial Welfare
27 Code dealing with workers' comp., that's what it says; they
28

1 are there to administer the programs for injured workers.

2 But instead, it works against the injured worker.
3 Unfortunately, I come from the employers' side myself. It
4 works against employers, the present system.

5 It's just an unresponsive system.

6 SENATOR CRAVEN: Is it something that's beyond
7 rectification?

8 SENATOR MELLO: No, I think it can be corrected.
9 We've got to have a strong signal from the Governor. He's
10 got to appoint a person there to the Department of Industrial
11 Relations that's going to make this system work. We in the
12 Legislature have to give him the tools to work with.

13 SENATOR CRAVEN: I think what he needs is some
14 money and an expediting director.

15 SENATOR MELLO: Correct, and a Board that will be
16 sympathetic to the workers' problems that they have, that are
17 injured there.

18 SENATOR CRAVEN: I think basically we have
19 discussed this before, because it's very fresh in my mind,
20 and I think you probably brought it to our attention in the
21 past.

22 I certainly don't disagree with you, but I've been
23 getting to know Mr. Costamagna quite well because of his
24 frequency in here, imploring us to put him back to work.

25 Why don't you say something about how you're going
26 to change the system? That might help.

27 MR. COSTAMAGNA: I'd like to address that question,
28

1 if I may.

2 CHAIRMAN ROBERTI: Please do, and then we'll have
3 Ms. Marshall also.

4 MR. COSTAMAGNA: In the last four months, I've
5 witnessed 25 new Workers' Compensation judges sworn in.

6 SENATOR MELLO: The last four months?

7 MR. COSTAMAGNA: The last four months.

8 SENATOR MELLO: If you don't mind, Mr. Chairman,
9 I'd like to question as we go along.

10 What was the vacancy in those positions prior to
11 that?

12 MR. COSTAMAGNA: I was not there prior to that, but
13 I do believe that -

14 SENATOR MELLO: There must have been 24 vacant
15 positions that were unfilled.

16 MR. COSTAMAGNA: I believe the new law provided for
17 the additional judge positions, and I think the funding came
18 after the budget was passed this last summer.

19 SENATOR MELLO: How many vacant positions are there
20 now?

21 MR. COSTAMAGNA: I don't know.

22 This is all part of the -- the Board, the
23 administration of the Workers' Compensation Division is
24 different than the WCAB.

25 One of the reasons I was willing to come back to
26 the Board and serve again was the passage of the new law.
27 And I sincerely believe, Senator Mello, that the new law is
28

1 going to rectify many of the things you've been talking
2 about.

3 I have had many cases in Salinas, your home area, I
4 believe, and that is one board where the presiding Workers'
5 Compensation judge has done an outstanding job in running
6 that office, and I don't think you'd find a mail backlog in
7 that office because Judge Charlie Decker is a judge of
8 long-standing who's done an excellent job.

9 Some of the problems that you have mentioned over
10 the various hearings I've been to have -- have existed in the
11 past and are being rectified, but they are the results of an
12 old law. The new law, I believe -- and this is why I have
13 accepted this position, and I believe I can contribute
14 something to it -- as Mr. Swezey has pointed out, it has four
15 or five excellent elements in it. One is primarily designed
16 to reduce litigation.

17 The initial claim form that has been developed did
18 not exist prior to 1190. That claim form, I believe, already
19 is having a salutary effect on the whole system. We are now
20 11 months into the new year, and I have seen only two cases
21 reach the Appeals Board that involved 1990 cases. I have to
22 -- I've heard that defense firms are laying off lawyers.

23 I have to believe, and this is one of the things
24 that I did between January and June of this year, was lecture
25 claims people at the particular company I was working for,
26 and I have to believe that the claims people of good
27 insurance companies -- and I want to differentiate those who
28

1 are doing their job properly and those who are not -- the
2 good insurance companies are rising to the level of this new
3 law. They are providing benefits immediately. They are
4 investigating their claims. They are attempting to help get
5 people back to work.

6 There are insurance carriers and there are self-
7 insureds that are managed by third party administrators that
8 probably re going to fall by the wayside if they don't shape
9 up quickly and rise to what is demanded of them in this new
10 law.

11 The new law also provides for some elimination of
12 doctor shopping by both sides. That's going to streamline
13 the system.

14 The new law provides for new procedures for
15 rehabilitation benefits. It increases --

16 SENATOR MELLO: You're talking about the Margolin
17 law that we passed --

18 MR. COSTAMAGNA: Yes, sir.

19 SENATOR MELLO: -- this last year. That came out
20 of the Legislature. That didn't come out of the
21 administration.

22 MR. COSTAMAGNA: No. I am saying that that is the
23 law that we are being called on to interpret, which the new
24 administration will be called on to administer. The hiring
25 of these 25 or so judges for the last three or four months
26 are all as a result of that new law.

27 SENATOR MELLO: I think what you're talking about
28

1 is the frustration the Legislature's had.

2 The administration has shown absolutely no
3 leadership in trying to get the Margolin bill, and trying to
4 get legislation, or trying to even get funding adequately
5 during the past seven years before this bill got passed.

6 MR. COSTAMAGNA: I can't speak to that, Senator,
7 but I do know emphasis. The emphasis is in a very positive
8 direction right now, and I think that the addition of new
9 judges, the Department is interviewing for referees. There
10 is a new level of referee being created to handle settlement
11 conferences and minor matters. All of this is going to work.

12 The burden is --

13 SENATOR MELLO: What you're reciting, sir, is what
14 Assemblyman Margolin and others in the Senate that worked
15 together to come up with a plan to try to fix some of the
16 problems.

17 The leadership of that came from the Legislature,
18 but the philosophy -- what I'm trying to say is that that the
19 philosophy of the administration has been just to let the
20 program run down and without trying to fix it.

21 MR. COSTAMAGNA: Well, I have just stated that I
22 made the conscious decision to return to the Board to try to
23 help do just what you are asking, to the limited extent that
24 I can on the Board. But I hope that my experience and --

25 SENATOR MELLO: Did you ever come up here and
26 testify on behalf of the Margolin legislation?

27 MR. COSTAMAGNA: No. I attended many of the
28

1 sessions. I had input into the -- into the bill through
2 committees I served on. I served on the Legal Committee of
3 the California Workers' Compensation Institute. The
4 spokesman for that organization appeared and testified; that
5 was Mr. Tebb and Mr. Malman. I served on that particular
6 Legal Committee for over seven years, so I did indirectly
7 have some -- some working --

8 SENATOR MELLO: The way you talk about this great
9 new law, you think you'd be there as an advocate, trying to
10 get it passed and trying to provide testimony before the
11 committees for it.

12 Well, I'm just letting you know how I feel. I'm
13 dismayed the way this Department is run. And I, for one, on
14 this Rules Committee, am going to take a very hard look at
15 the new Director of Industrial Relations. I want to, in
16 fact, ask the Rules Committee if we could watch that person
17 in action for a while to see what their policy's going to be
18 before we act to confirm him.

19 Once you confirm these people, they come up and
20 they say what they're going to do. They get people that
21 testify. Mr. Henning was here saying what you did for the
22 Boys Club is great, but it has nothing to do with this job.
23 Once you get confirmed, then they're off and running.

24 I'd like to have some of my votes back on people I
25 voted for confirmation during the past eight years that I've
26 been on this Committee. They gave us a good smile while they
27 were here, but they sure failed to fulfill their commitments
28

1 afterwards.

2 CHAIRMAN ROBERTI: I'm going to entertain a motion
3 that the two appointments be put over on call of the Chair.

4 SENATOR PETRIS: So move.

5 CHAIRMAN ROBERTI: We would hope that, maybe at
6 some point, the difficulty can be addressed. I think that's
7 the best we can do right now.

8 Senator Petris moves. Any discussion or debate?

9 I don't think this takes a roll call, so without
10 objection, such will be the order.

11 And I noted in my briefing book that both of your
12 appointments, I think, run substantially into next year.

13 MS. MICHEL: June and July.

14 MR. COSTAMAGNA: I'll be very happy to come back
15 again. I'm getting to know all of you better as time goes
16 on.

17 Thank you all very much.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 5:15 P.M.]

22 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of December, 1990.


EVELYN J. MIZAK
Shorthand Reporter

